

**ATTACHMENT A
DRAFT COPY**

REQUEST FOR PROPOSALS

**OPERATION OF THE SUNNYVALE
MATERIALS RECOVERY AND
TRANSFER STATION**

*Issued by the
City of Sunnyvale on
Behalf of the Cities of
Mountain View, Palo Alto, and Sunnyvale*

*April 4, 2006
Draft 2 for review*



*Printed on Recycled Paper
Double-sided to Conserve Resources*

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- C. AGREEMENT
- D. MEMORANDUM OF UNDERSTANDING
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- G. DESCRIPTION OF SMaRT STATION EQUIPMENT
- H. PERMITS NECESSARY FOR OPERATION OF THE SMaRT STATION
- I. TRANSFER/PROCESSING REPORT
- J. EXAMPLE – MATERIALS RECOVERY AND MARKETING PLAN

ATTACHMENT

SMaRT STATION OPERATIONAL AND FINANCIAL INFORMATION (CD-Rom)

SECTION 1. PROJECT OVERVIEW

1.1 INTRODUCTION

The City of Sunnyvale (City), on behalf of the cities of Mountain View, Palo Alto and Sunnyvale (the Participating Agencies) is seeking proposals from qualified and capable firms to operate the Sunnyvale Material Recovery and Transfer Station (SMaRT Station®). The operating agreement (Agreement) will be between the City of Sunnyvale and the selected Contractor for a seven (7) year period. At the City's option the term of the Agreement may be extended for one or more periods of three months, up to a maximum of one year. SMaRT Station operations under the Agreement will commence on January 1, 2008.

The schedule for this procurement process is as follows:

Action	Date
RFP Issued to Proposers	June 1, 2006
Mandatory Pre-proposal Meeting & SMaRT Station Tour	June 12, 2006
Mandatory Pre-proposal Meeting	June 26, 2006
Deadline for written questions from proposers	June 30, 2006
Written responses to proposers questions issued by City	July 17, 2006
Proposals Due	August 1, 2006
Proposal Evaluations Begin	August 2, 2006
City Council Awards Contract	February 6, 2007
New Contract Begins	January 1, 2008

The SMaRT Station is located on nine acres of City-owned property, north of Caribbean Drive and immediately adjacent to the closed Sunnyvale Landfill (see Appendix A, SMaRT Station Design Drawings, Figure A-2). The SMaRT Station is designed to process 1,500 tons of material per day. The facility became operational in July, 1993 for use as a transfer station, and went into full operation as a municipal solid waste (MSW) processing facility in July 1994. The SMaRT Station is currently operated by GreenTeam/Zanker of Sunnyvale. The

operational objective of the SMaRT Station is to maximize the cost-effective diversion of solid waste generated by the residents and businesses of the Participating Agencies. Proposals must indicate how the operation of the facility will be conducted to optimize the recovery of materials from MSW, yard trimmings, and source-separated recyclable materials (Recyclable Materials) delivered by the Participating Agencies. The types and estimated quantities of materials to be recovered must be thoroughly discussed in the proposal.

1.1.1 Required Services

Services to be provided include the receipt, processing and transfer of the following material streams:

- MSW from each of the Participating Agencies (franchised haulers and city vehicles).
- Source-separated Recyclable Materials from the City of Sunnyvale's residential curbside and multi-family recyclable collection programs.
- Source-separated Recyclable Materials from the City of Mountain View's residential curbside, multi-family, and commercial recycling collection programs.
- Yard trimmings from the City of Sunnyvale and City of Mountain View's residential yard trimmings collection programs.
- Recyclable Materials brought to the SMaRT Station by the public.

The selected Contractor will also be responsible for the marketing of all recovered materials. All non-diverted MSW will be transferred by the SMaRT Station Contractor to the Kirby Canyon Landfill located in south San Jose.

1.1.2 Additional Required Services

In addition to the above required services, receipt, processing and transfer of the following material streams, although not currently anticipated, may also be required:

- Commingled single-stream Recyclable Materials from the City of Palo Alto's residential curbside and commercial recycling programs. Palo Alto's current collection and processing agreement will expire July 1, 2009 unless extended. The single stream recyclable materials could be processed utilizing the equipment designed for processing MSW.
- Yard trimmings from the City of Palo Alto's residential yard trimmings collection program. This material is currently processed at Palo Alto's composting facility, which is scheduled to close in 2011.
- Source-separated commercial recyclables from the cities of Sunnyvale and Palo Alto.

For purposes of responding to this Request for Proposals (RFP), Proposers should assume that residential curbside Recyclable Materials and source-separated yard trimmings from the City of Palo Alto and commercial source-separated recyclable materials from the cities of Sunnyvale and Palo Alto will not be delivered to the SMaRT Station for processing. If any of these materials are delivered to the SMaRT Station in the future, however, the selected Contractor will be required to handle these materials, as directed by the City. As described in Section 4.2.5, separate costs are being requested from Proposers for processing these materials.

1.1.3 Minimum Recycling Level

Materials recovery at the SMaRT Station is anticipated to reduce the waste stream going to the landfill between 17.5% to 25% or more. A minimum of 17.5% material diversion (minimum recycling level) is required, but Proposers are encouraged to calculate the highest cost-effective recovery rate achievable in their informed judgment. Only MSW delivered to, and recovered by the SMaRT Station will count toward the 17.5% minimum recycling level. The following materials will not count toward the 17.5% minimum recycling level:

- Source-separated recyclable materials from the Participating Agencies (including single-stream curbside recyclables).
- Source-separated wood and yard trimmings from the Participating Agencies.
- Recyclable Materials brought to the buyback/drop-off center.
- Other source-separated Recyclable Materials (e.g. wood, concrete, clean soil) delivered by the public.

The materials to be recovered and processed at the SMaRT Station will include, but are not limited to, aluminum, cardboard, ferrous metals, high grade paper, mixed waste paper, newsprint, glass, wood, yard trimmings, plastics, e-waste, tires, mattresses and white goods (large appliances). Recovered and processed materials will be shipped to markets by the Contractor.

1.1.4 Compensation

The selected Contractor will be compensated by four separate revenue sources:

- A fixed annual Contractor's Payment (proposed by selected Contractor) for accepting, processing, and transferring up to 290,000 tons per year of MSW and yard trimmings from the Participating Agencies' franchised haulers (not including publicly hauled waste). The Contractor's Payment will be paid in 12 equal monthly installments each year.
- Per-ton Tipping Fees for Excess Tonnage (Proposed by selected Contractor) applied to tons of franchised MSW, and yard trimmings in excess of 290,000 tons per year.

Proposers shall provide two separate Tipping Fees for Excess Tonnage: One for MSW and another for yard trimmings. These Tipping Fees will be utilized when the combined inbound tonnage of franchised MSW and yard trimmings exceeds 290,000 in any given fiscal year.

- The Contractor's Share of Public Use Fee Revenue (set by the City). The City establishes Public Use Fees for publicly hauled (non-franchised) materials. The Public Use Fees vary by material type and are all greater than \$5.50 per cubic yard. The Contractor's Share of Public Use Fee revenue for all material types shall be \$5.50 per cubic yard. The selected Contractor will collect Public Use Fee revenue from public customers, retain \$5.50 per cubic yard, and remit the remainder of the Public Use Fee Revenue to the City.
- A percentage of the revenues from the sale of recyclable materials (sliding scale based on recycling rate achieved by selected Contractor) as specified in Exhibit O-13 of the Agreement.

The annual Contractor's Payment, Tipping Fees for Excess Tonnage and Contractor's Share of Public Use Fee Revenue will be adjusted for inflation each fiscal year per Section 5.03 of the Agreement.

In addition, the City will reimburse the selected Contractor for the costs of stationary equipment parts and for the cost of proper management of intercepted hazardous waste and sharps.

The selected Contractor will receive no tipping fee or other direct compensation for the processing of source-separated Recyclable Materials from the residential curbside, multi-family and commercial recycling programs other than a share of revenues received from the sale of those materials. The Contractor's percentage of material revenues specified in Exhibit O-13 of the Agreement will be applied to all materials marketed from the SMaRT Station including source-separated Recyclable Materials, buyback/drop-off materials, yard trimmings and wood waste.

The four revenue sources identified above are expected to cover ANY AND ALL of the selected Contractor's expenses including receipt, processing, marketing, transportation and transfer of all materials as well as associated administration and other costs. No other form of compensation, with the exception of reimbursement for replacement parts for City-owned equipment, and costs related to the proper management of intercepted hazardous waste, will be provided to the selected Contractor. The City pays fees and charges for disposal of all materials delivered to the Kirby Canyon Landfill. The selected Contractor will be required to provide the City with copies of daily weight tickets.

1.1.5 Proposal Forms

Proposers shall complete and submit each of the proposal forms included in Appendix B. These Proposal Forms must contain a sufficient level of detail to allow adequate evaluation on

a technical, environmental, and financial basis by the selection team. Proposals are expected to include details on materials handling, materials recovery, sale of recyclable materials, hauling techniques, operational performance assurance, and equipment costs and staffing requirements.

1.1.6 Operating Agreement

A copy of the operating agreement is included in this RFP as Appendix C, and is referred to throughout this document as "the Agreement." The selected Proposer must be prepared to immediately execute the Agreement once the contract is awarded to it by the Sunnyvale City Council. City does not intend to engage in post-award negotiations. City staff will present to the Sunnyvale City Council two or more fully-negotiated and signed Agreements for the Council to select from. The RFP summarizes many of the key requirements that are detailed in the Agreement. The RFP does not describe all provisions of the Agreement, but serves as a directory to appropriate sections of the Agreement. Proposers are required to read the Agreement in Appendix C very carefully and to have it reviewed by their own attorneys prior to submitting their proposals. Proposers must note that some proposal forms will become part of the Agreement as Exhibits. Questions concerning the Agreement must be directed to the project coordinator as specified in Section 1.3.2 below.

1.1.7 Organization of Request for Proposals

This document is organized into the following sections:

- Section 2 provides general operational and financial information related to the SMaRT Station.
- Section 3 provides design information and a description of the SMaRT Station.
- Section 4 defines the minimum operation requirements for the SMaRT Station.
- Section 5 describes the proposed business and financial arrangements.
- Section 6 provides an outline of the information required in the proposal, the format in which it is to be submitted, and the general evaluation criteria that will be used to select the contractor.

1.2 GENERAL REQUIREMENTS

1.2.1 Electronic Submittal

Proposers shall submit an electronic version of its proposal and forms. The electronic version shall be submitted in the form of a CD-Rom (two copies total). This RFP contains electronic versions of the proposal forms in MS Word and MS Excel formats. Proposers shall submit

the electronic versions of these forms in the same format (MS Word or MS Excel) that they were provided.

1.2.2 Number of Copies

Proposers shall submit one (1) unbound single-sided original (signed) and ten (10) bound double-sided copies of the proposal package in its entirety, including all proposal forms, appendices, exhibits, and other requirements as specified herein.

Proposers must also include one (1) extra unbound copy of the proposal with any confidential material totally blacked out or removed from the text so that one copy can be made available for public inspection.

The proposal package shall be typed or printed (1-1/2 or double-spaced) on 8-1/2-by-11-inch recycled paper (minimum 30% post consumer content). Any oversize documents must be folded to size and secured in the proposal.

1.2.3 Signature and Authority

The proposal must be signed by an officer of the corporation, principal, partner, or other duly authorized person or persons with the authority to make the commitments required by this RFP. The signatures are to be provided as indicated on the proposal forms.

If the proposal is submitted by a partnership, the name and address of the partnership and a list of all partners,. If made by a corporation, the proposal must indicate the name, the state in which the corporation is incorporated, and the address and federal tax identification number of the corporation. If the proposal is made by a corporation, a certified copy of the appropriate section of the bylaws, or a resolution of the board of directors of the corporation, shall be furnished showing the authority of the officer who has signed the proposal and proposal forms to execute contracts on behalf of the corporation. If the proposal is made by a joint venture, a copy of the joint venture agreement, and the name, address, and organizational status of each of the joint ventures must be provided. Where a joint venture is composed of one or more partnerships, corporations, or other entities, the information specified in this paragraph must be provided for each entity. Each proposal form submitted by a joint venture must be signed by at least one authorized officer from each party in the joint venture agreement.

In proposals containing proprietary information, proprietary paragraphs and/or other data must be clearly marked as noted below in Sections 1.2.4 and 1.2.5.

1.2.4 Cost for Preparation of Proposals/Ownership of Proposals

Each proposal submitted in response to this RFP shall be prepared at the sole cost and expense of the Proposer with the understanding that no claims against the City for

reimbursement will be accepted. All proposals will become the property of the City and will not be returned to the Proposer. The Proposer must not include confidential information or trade secrets without expressly stating and identifying the information or trade secrets to be considered confidential, since all accepted proposals will become public information. However, if such information is necessary to assure a competitive proposal, then the Proposer is to follow the guidelines for confidential information as discussed below.

1.2.5 Protection of Confidential Materials

Information submitted to the City by Proposers is subject to possible compulsory disclosure by the City upon request from a member of the public, under the California Public Records Act, Government Code Section 6250, et seq. The City recognizes that some information which is called for in the RFP, or which may be required to be submitted in subsequent stages of the evaluation and contracting process, may be considered trade secrets or otherwise confidential by some Proposers. The City will protect the confidentiality of materials submitted to it to the extent permitted by the Public Records Act, in accordance with the procedures, and subject to the limitations, described in this section.

Material which Proposers wish to be treated in confidence and withheld from public disclosure must be submitted in a separate envelope marked "CONFIDENTIAL." In addition each page of confidential materials must be clearly marked as "CONFIDENTIAL." The City will not voluntarily disclose materials so marked to persons other than the Participating Agencies' officers, attorneys, employees, and consultants involved in evaluating the proposals received.

If the City receives a request from a third party to review and/or copy material so marked, it will inform the Proposer who submitted it and will allow the Proposer to present arguments and facts to the City in support of the position that the material is entitled to an exemption from disclosure under the Public Records Act and should not be released.

If the City determines that the material is not entitled to an exemption and that it must be released, the City will advise the Proposer of that determination prior to releasing the material so that the Proposer may seek a court order enjoining its release.

If the City determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, the City will advise the Proposer and will not oppose a motion by the Proposer to intervene in the action. The Proposer must either intervene or agree to pay the City's legal expenses in defending the action; otherwise the City will have no obligation to affirmatively defend the action and may release the information sought without any liability whatsoever to the City.

No proposer will seek damages against the City or recovery of its attorneys' fees from the City, as a result of any dispute related to the release of information submitted in response to

this RFP, whether the Proposer is seeking release of another Proposer's information or is opposing a third party's request for release of its material.

Material that has been marked as confidential will be returned to all unsuccessful Proposers once a contract has been signed with the selected Proposer.

By submitting a proposal, Proposers agree to all the foregoing provisions.

Proposers may not designate Proposal Forms 1, 11, 12, and 13 (Transmittal letter, Annual Operating Cost, Annual Contractor's Payment and Tipping Fees for Excess Tonnage) as confidential. If these forms are designated as confidential by a Proposer, the proposal will be considered non-responsive.

1.2.6 Rights Reserved by the City

The City reserves the right, in its sole discretion, to pursue any or all of the following actions in regard to this RFP:

- Issue addenda to the RFP.
- Request additional information and/or clarification from the Proposers.
- Permit the timely correction of errors, and waive minor deviations.
- Reject any or all proposals.
- Issue subsequent RFPs based on refinements of concepts proposed in response to the RFP.
- Withdraw this RFP.
- Extend the time for submittal of Proposals.
- Negotiate prices and terms with one or more Proposers.
- Select the Proposer that, in the judgment of the City Council and any evaluation process notwithstanding, is most likely to succeed in developing the project desired by the City.
- Take whatever other action it deems in its interest.

This RFP does not obligate the City to accept any proposal, negotiate with any Proposer, award a contract, or proceed with the development of any project described in response to this RFP.

1.2.7 Communications Guidelines

In order ensure a fair and orderly process, Council has adopted the following communications guidelines to be adhered to during this RFP process.

Proposers shall:

- Submit a statement of interest in the RFP;
- Sign a statement agreeing to the communication guidelines;
- Attend a mandatory pre-proposal meeting and facility tour (per Section 1.3.1);
- Direct all questions and communications regarding the RFP in writing to one designated City representative (per section 1.3.2);
- Be prohibited from distribution of door-to-door materials, and newspaper, radio, television and public space advertisements in regards to this RFP process;
- Be prohibited from meeting individually with the Mayor or any individual Councilmember during the RFP process.

Proposers who do not comply with the communications guidelines will be disqualified and cannot be selected to enter into the Operating Agreement with the City.

The Mayor and Councilmembers shall:

- Notify the City Manager of any potential conflicts of interest
- Include another Councilmember and a member of City staff (to be designated by the City Manager) in any non-public meetings between proposers and Councilmembers, and should listen to but not make commitments to proposers in such meetings.

1.3 GENERAL INFORMATION

1.3.1 Pre-proposal Meetings

Two MANDATORY pre-proposal meetings will be held. The first will be on June 8, 2006, at 10 a.m. at the SMaRT Station, 301 Carl Road in Sunnyvale, and will include a tour of the facility. At that time, questions will be answered. A second meeting will be held in the West Conference Room, Sunnyvale City Hall, 456 W. Olive Avenue in Sunnyvale on June 15, 2006, at 10 a.m. The City is not responsible for dissemination of information to those not present at the pre-proposal meetings.

All questions submitted in writing, or asked at the pre-proposal meetings, will be responded to in writing by the City. Proposers are encouraged to submit written questions prior to each pre-proposal meeting. No written questions will be accepted after July 7, 2006. Only published

minutes from the pre-proposal meetings and other written addenda may be relied upon when seeking clarification of the requirements stated in the RFP.

1.3.2 Project Coordinator / Point of Contact

Proposers shall direct all questions regarding this RFP to the project coordinator. This will assure that consistent and accurate information is disseminated. The project coordinator is:

David Gakle
Senior Buyer
Sunnyvale City Hall Annex
650 W. Olive Avenue
P.O. Box 3707
Sunnyvale, California 94088-3707
Telephone: (408) 730-7303
Fax: (408) 730-7710
E-mail: dgakle@ci.sunnyvale.ca.us

Mr Gakle will distribute any RFP Addenda and clarifications concurrently to all parties who have submitted statements of interest in the process.

The City has established an internet site for the purpose of disseminating information to, and receiving information from, potential proposers. All questions from proposers, City responses to those questions, and any amendments or clarifications to the RFP will be posted on this site. The site addresses is [www. \[DAK: City to provide information.\]](http://www.dak.ci.sunnyvale.ca.us)

1.3.3 Submission Deadline and Address

Sealed proposals shall be received no later than 3:00 p.m. on August 1, 2006, addressed as follows:

David Gakle
Senior Buyer
Sunnyvale City Hall Annex
650 W. Olive Avenue
P.O. Box 3707
Sunnyvale, California 94088-3707
Re: SMaRT Station

Proposals may be 1) hand delivered to 650 W. Olive Avenue; or 2) mailed to P.O. Box 3707. Proposals received later than the above-mentioned deadline will be returned unopened to the Proposers, and those Proposers will be eliminated from the procurement process. If interviews with Proposers are desired by the City, it is anticipated that they will be held on August 28 and 29, 2006.

SECTION 2. GENERAL INFORMATION

2.1 BACKGROUND

The cities of Mountain View, Palo Alto and Sunnyvale require the ongoing operation of a transfer station/materials recovery facility as part of a solution to near and long-term solid waste disposal needs. The SMaRT Station is intended to satisfy that requirement.

The SMaRT Station is located on a City-owned site adjacent to the closed Sunnyvale Landfill, the Sunnyvale Water Pollution Control Plant (WPCP), and San Francisco Bay (Please refer to Figures A-1 and A-2 in Appendix A). The City of Sunnyvale owns the site. Other operations adjacent to the site include the County Household Hazardous Waste Drop-off event site, and Raisch Products Concrete and Asphalt Recycling Operations. Nearby land uses also include the Sunnyvale Baylands Park and office /industrial park complexes.

Non-diverted MSW from the SMaRT Station is transferred to the Kirby Canyon Landfill. The Participating Agencies have contracted with Waste Management of North America for long-term-disposal capacity at the Kirby Canyon Landfill. The Kirby Canyon Landfill is located in south San Jose, California, approximately 27 miles from the SMaRT Station at the Coyote Creek Golf Drive exit off Highway 101. The Memorandum of Understanding (MOU) among the Participating Agencies regarding the use, operation and business arrangements between the SMaRT Station and Kirby Canyon Landfill is presented in Appendix D.

2.2 TONNAGE / FINANCIAL DATA

2.2.1 MSW and Source-Separated Yard Trimmings Tonnage Data

Table 2-1 provides a summary of MSW and yard trimmings tonnage processed and diverted at the SMaRT Station for FY 2000/01 through FY 2004/05.

Note that in addition to the materials it currently delivers to the SMaRT Station, the City of Palo Alto also delivers approximately 25,000 tons per year of MSW and 16,000 tons per year of yard trimmings to its municipally owned landfill/composting facility. Palo Alto's landfill and composting facility are scheduled to close in 2011. Should the City of Palo Alto choose to send any of these tons to the SMaRT Station in the future, and should this result in more than 290,000 total franchised tons of MSW and yard trimmings being delivered to the SMaRT Station in any given year, then the selected Contractor would be compensated per the Tipping Fees for Excess Tons.

2.2.2 Recyclable Materials Processing – Commodity Tonnage

Table 2-2 provides a summary of tonnage data (by material type) of commodities recovered from the City of Sunnyvale and the City of Mountain View's residential curbside and multi-family recycling programs, and the City of Mountain View's single-stream commercial recycling program for fiscal years 2001/02 through 2004/05. The City of Palo Alto is not expected to bring its source-separated recyclables to the SMaRT Station for processing at this time.

The City of Mountain View offers recycling services at no charge to business customers. Businesses can choose from two different types of recycling containers: wheeled carts or bins. Bins are used for large amounts of recycling such as cardboard or mixed recyclables (paper, glass bottles and jars, metal cans, and plastic containers #1 through #7). Carts are used where space is limited or for small amounts of recycling. Bins come in different sizes to match customer needs. Note that in addition to this service provided by Mountain View's franchised hauler, independent recyclers may collect materials from businesses in Mountain View, Palo Alto, and Sunnyvale subject to those cities' requirements.

2.2.3 MSW Processing – Commodity Tonnage

Table 2-3 provides a summary of outbound tonnage data (by material) for commodities recovered from MSW by the SMaRT Station in fiscal years 2001/02 through 2004/05. This tonnage also includes approximately 10 tons per month of source separated recyclable materials accepted at the SMaRT Station buyback/drop-off center.

Table 2-1
SMaRT Station Operations and Financial Information
 By Fiscal Year (July-
 June

OPERATIONAL INFORMATION	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	Average
Participating Agencies' Franchised MSW (1):	226,002	217,892	214,208	209,450	216,888
Publicly Hauled MSW:	7,625	6,746	5,988	5,856	6,554
Total MSW Delivered	233,627	224,639	220,196	215,305	223,442
Total Tons Yard Trimmings Delivered:	20,613	22,679	22,258	22,993	22,136
TOTAL Tons MSW & Yard Trimmings Delivered	254,240	247,318	242,454	238,298	245,578
Total Tons Recyclable Materials Tons Delivered	18,207	20,241	20,915	20,020	19,846
Tons to Landfill	193,521	178,191	179,900	176,098	181,927
MSW Recovery Rate (2)	17.17%	20.68%	18.30%	18.21%	18.58%
(1) MSW = Municipal Solid Waste					
(2) (Total MSW Delivered to SMaRT - Tons to Kirby)/(Tons Delivered to SMaRT) Basis for determining Contractor's share of recyclables revenue.					
FINANCIAL INFORMATION	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	Average
Contractor Revenues					
Contractor's Payment	\$ 5,568,657	\$ 5,542,759	\$ 5,571,137	\$ 5,504,239	\$ 5,546,673
Share of Recyclables Revenue	\$ 1,705,848	\$ 2,388,604	\$ 2,884,212	\$ 3,383,227	\$ 2,590,473
Share of Public User Fee Revenue	\$ 101,664	\$ 109,427	\$ 107,316	\$ 111,424	\$ 107,458
Total	\$ 1,807,512	\$ 2,498,031	\$ 2,991,527	\$ 3,494,651	\$ 2,697,930
Reimbursements from City to Operator					
Spare Parts	\$ 153,912	\$ 247,718	\$ 315,131	\$ 286,147	\$ 250,727
Hazardous Waste Transportation and Disposal	\$ 83,786	\$ 91,171	\$ 102,260	\$ 130,826	\$ 102,011
Total	\$ 237,698	\$ 338,889	\$ 417,391	\$ 416,973	\$ 352,738

Table 2-2
Recyclable Materials Processing – Commodity Tonnage*

	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>Totals</u>
<u>Market Value Commodities</u>					
Aluminum UBC	104	120	111	90	425
Corrugated Cardboard (occ)	2,268	2,409	2,912	3,417	11,006
Glass, amber	206	255	236	230	927
Glass, flint	500	587	499	528	2,113
Glass, green	431	537	541	557	2,066
Glass, mixed	1,912	1,959	1,818	687	6,376
HDPE--Colored (Epic Mix)	307	391	368	472	1,538
Mixed Paper (mxd)	4,528	5,202	5,857	4,941	20,528
Old Newspaper (onp)	6,679	6,765	6,291	6,382	26,117
PET	263	358	332	380	1,332
Tin Cans (baled)	389	426	395	361	1,572
<u>Tons Shipped - Mkt Value Commodities</u>	17,587	19,008	19,361	18,044	74,000

*Curbside, Multi-family, and Commercial recyclables from Sunnyvale and Mountain View

Table 2-3
MSW Processing – Commodity Tonnage*

	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>Totals</u>
Aluminum UBC	102	76	70	89	337
Concrete	4,010	3,079	3,044	2,908	13,041
Corrugated Cardboard (occ)	2,846	2,921	3,114	2,814	11,695
Glass, amber	66	62	3,114	90	3,332
Glass, flint	134	117	233	332	816
Glass, green	102	82	88	224	496
Glass, mixed	171	103	(338)	174	111
HDPE--Colored (Epic Mix)	89	256	274	348	967
HDPE--Natural	45	-	-	-	45
Mixed Paper (mxd)	10,974	9,341	5,357	8,744	34,416
Mixed Plastics 3-7/Plastic Film	63	100	7	34	205
Office Pack	128	-	-	-	128
Old Newspaper (onp)	223	(30)	32	0	225
PETE	177	109	286	229	802
Scrap steel	5,728	5,057	5,086	4,867	20,739
Tin Cans (baled)	(179)	257	226	227	532
Wood Overs	2,025	5,897	3,255	3,217	14,395
Foodwaste fines	581	4,652	3,565	5,094	13,893
Clean Dirt	245	2,211	1,157	1,661	5,274
CRTs / Monitors	33	61	67	46	207
Green Materials (1)	5,345	3,164	2,552	5,413	16,474
Tires	27	128	94	66	316
Water	80	80	58	92	310
Hazardous/Universal Wastes	250	250	188	176	865
Total	33,265	37,973	31,532	36,847	139,618

Calculation of Green Materials Recovered from MSW

Yardwaste Shipped	25,958	25,843	24,811	28,406	105,017
Yardwaste In	20,613	22,679	22,258	22,993	88,543
Difference - Recovered from MSW (1)	5,345	3,164	2,552	5,413	16,474

*Commodities recovered from MSW

2.3 WASTE COMPOSITION DATA

The City of Palo Alto conducted a waste composition study of the outbound residue from the SMaRT Station in November 2005. A summary of the results from this study is provided in Appendix E.

In addition, a summary of the results of the most recent waste composition study for the SMaRT Station incoming waste stream is provided in Appendix E. This study involved field analyses conducted from August 15, 1995 through September 1, 1995. A complete copy of this study is available for review at the City of Sunnyvale's offices. It should be noted that the City of Mountain View and the City of Sunnyvale multi-family recycling programs were implemented after this study was conducted.

2.4 OTHER AVAILABLE DATA

A computer disk containing the following additional operational and financial information for the SMaRT Station for fiscal years 2000/01 through 2004/05 is provided as an attachment of this RFP.

Monthly Tonnage Reports [SMaRT_Tonnage_Report.xls]

Monthly Diversion Reports

SMaRT Station Contractor's Cost Allocation Report

SMaRT Station Commodity Shipped Data [SMaRT_Commodity_RPT.xls]

Replacement Parts Costs

Hazardous Waste Transportation and Disposal Costs

2.5 FINAL ENVIRONMENTAL IMPACT REPORT

The Final Environmental Impact Report (FEIR) for the SMaRT Station project was completed and certified by the City of Sunnyvale in 1990, based on a conceptual design of the facility. An addendum to the FEIR was completed to reflect the final design of the facility. The selected Contractor will be required to comply with various mitigation measures adopted by the City Council when the FEIR was certified. Copies of the FEIR and Addendum are available from the City of Sunnyvale.

SECTION 3. DESIGN AND DESCRIPTION OF THE SMART STATION

3.1 SMaRT STATION DESIGN

3.1.1 SMaRT Station Capacity

The SMaRT Station is a 100,000 square foot mixed waste processing/transfer station facility with a design and permitted capacity of 1,500 tons per day (tpd) (5 days per week). The SMaRT Station contains two separate sorting operations:

- MSW processing lines, for recovery of commodities from mixed MSW delivered by the Participating Agencies.
- Recyclable Materials processing lines, for processing of source separated recyclables received from curbside, multi-family and commercial programs in Sunnyvale and Mountain View.

Note that the SMaRT Station is currently in the process of re-designing and replacing its MSW processing equipment. The new equipment is scheduled to be completely installed before the beginning of the Agreement (January 1, 2008).

3.1.2 Principal SMaRT Station Features

Principal features provided in the SMaRT Station include:

- Waste tipping floor
- Enclosed hazardous waste storage container
- Maintenance area
- MSW compactor/transfer trailer loading areas
- Trailer staging area
- Two MSW processing lines
- Recyclable Materials unloading and processing area and scale
- Two Recyclable Materials sorting lines
- Recyclable Materials buyback/drop-off center
- Consolidation and storage area for recovered materials
- Wood and yard trimmings processing and storage area
- Office and visitor center
- Entrance facility, including gate house, pay booths and scales
- Parking for employees and visitors

A series of SMaRT Station design drawings are presented in Appendix A. Specifically, the drawings illustrate the following: [DAK per DS add info on new equipment/processing lines.]

- Site General Arrangement (Figure A-3).
- Building General Arrangement (Figure A-4).
- Mass Flow Diagram (Figure A-5).
- MSW Processing Equipment General Arrangement (90% drawings) [DAK: need drawings] (Figure A-6).
- Source Separated Recyclables Processing Equipment General Arrangement (A-7).
- Architectural Main Building Exterior Elevations (Figure A-8).
- Utilities Plan (Figure A-9).

3.1.3 Tipping Operations

1. City- Designated Hauler Tipping Operations

Residential, commercial, and industrial haulers are directed by traffic control signs along the access road and an overhead sign, located at the entrance to the two inbound scales. Vehicle weight data (e.g., truck number, tare weight, gross vehicle weight, net load weight) is entered and total price per load calculated by the SMaRT Station's scale software system. The driver then receives a weight ticket prior to being allowed to proceed onto the tipping floor.

From the gatehouse, vehicles proceed to the SMaRT Station (either the main MSW processing building, Recyclable Materials processing area, or the yard/wood trimmings processing area). Upon arrival at the tipping floor, vehicles are directed by traffic controllers onto several areas of the tipping floor depending on the type of waste carried. Under the instruction from the traffic controllers the collection vehicle driver unloads the contents of the collection vehicles directly onto the tipping floor. After unloading, the collection vehicles follow established routes and exit the processing facility to resume regular route collection activities. Determination of recovery potential of a load is made at the tipping floor or by pre-arrangement with the hauler. Those few loads that are not acceptable for processing are directed to tip adjacent to the MSW compactor.

2. Public Haul Tipping Operations

The public is directed to the SMaRT Station by traffic signs, and an overhead directional sign on the access road to the scale house at the entrance to the facility. Public customers are charged at the entrance gate according to weight or volume and type of materials being delivered. Public vehicles are then

directed to the public haul tipping area on the tipping floor, or if they contain only source-separated wood or yard trimmings, the unloading area in the wood/yard trimming processing area. After unloading, the public vehicles follow established routes to exit the SMaRT Station.

Public haul vehicles entering the main processing building are directed by a spotter to the public tipping area where the customer unloads the MSW on the floor. Large, easily salvageable commodities unloaded on the public tipping area are pulled from the load by a team of sorters and placed in appropriate bins for storage prior to mixing with like materials for marketing. The remaining material is pushed by a wheel loader to the appropriate section of the main tipping floor, and either joined with MSW to be processed or with sorted MSW awaiting transfer to the landfill.

3.1.4 MSW Processing Operations

1. Floor Sorting of Materials from Commercial and Industrial Loads

MSW processing starts on the tipping floor, where the following materials are separated from the remaining waste stream: white goods, bulky commercial wastes, batteries, tires, bulk ferrous metals, wood, and yard trimmings. Additionally, certain construction and demolition wastes, such as asphalt, concrete, drywall and metals are separated out for recycling. Effective floor sorting aids in the overall efficiency of the materials recovery process.

The selected contractor shall utilize floor sorting to identify and remove banned, hazardous, and universal wastes that may not be delivered to any Class III landfill (in accordance with current and future regulations).

Banned wastes include tires and large appliances. Costs for processing, and/or disposal of these wastes is the responsibility of the contractor, and will not be reimbursed by the City. Revenues from recycling, or costs to recycle these materials will be shared in accordance Article 5 of the operating agreement.

Hazardous and Universal Wastes discovered while performing load checks, or otherwise discovered during processing must also be removed from the waste by the Contractor. These materials will be removed by the contractor to the proper storage area and contractor will arrange for proper recycling or disposal. Costs for recycling or disposal of hazardous wastes and universal wastes will be reimbursed by the City. Revenues generated from the recycling of universal wastes (such as payment received under SB 20 for recycling of covered electronic devices) will be shared in accordance with Article 5 of the operating

agreement. The City shall designate the selected contractor as an authorized collector for the purpose of receiving SB20 payments.

After visual inspection and removal of any targeted floor-sort materials, the remaining material is moved by wheel loaders to one of two walking floor conveyors that feed the MSW processing lines.

2. Line Sorting of MSW [DAK: City to provide description of new equipment]

3.1.5 Transfer Operations

Residual waste from the materials recovery operations, and materials that are moved directly to the transfer loadout operations are compacted into "slugs" and loaded into transfer trailers. The compactor infeed conveyor and compactor are capable of loading 72 tons of material per hour into transfer trailers. Once compacted, this material is delivered to Kirby Canyon Landfill. Trailers delivering loads to the landfill operate in accordance with the limitations on their hours of operation specified in Section 3.03 and Section 4.01 of the Agreement. A top loading conveyor has also been included in the event that the compactor and/or compactor infeed conveyor are not working and solid waste must be loaded by conveyor into open top transfer vehicles. The transfer trailers must have the ability to be loaded from the rear (by compactor) or from the top by conveyor, and emptied without the aid of a tipper.

3.1.6 Recyclable Materials Processing Operations

Source-separated curbside, multi-family and commercial recyclables collected in the cities of Sunnyvale and Mountain View are processed in the Recyclable Materials processing area of the SMaRT Station. The Recyclable Materials processing area includes an in-ground scale equipped with a card reader system for tracking of material weights. The Recyclable Materials processing system includes two processing lines, one for fiber sorting and another for commingled rigid containers. Dual stream materials are dumped in designated tipping areas adjacent to the processing lines and moved to conveyors with a small wheel loader. Materials are sorted mechanically and manually into bunkers or hoppers and stored until baled. Glass is dropped through chutes into 6-yard containers.

3.1.7 Wood and Yard Trimmings Processing

Materials which will be directed to the wood and yard trimmings processing area include grass, leaves, garden waste, plant pruning, tree trimmings and untreated timber products (lumber, pallets and similar wood products). Incoming vehicles containing clean, source-separated loads of these materials are routed directly to the wood and yard trimmings processing area to unload their materials. The same materials removed from industrial, and commercial and residential mixed loads on the MSW tipping floor will be moved by the selected Contractor from the tipping floor to the wood and yard trimmings processing

building for grinding. Building demolition debris may not be processed in the wood and yard trimmings processing area.

At the wood and yard trimmings processing area, the vehicles are directed into the tipping area by a traffic spotter to discharge their materials. Loads will be inspected on the floor for end-market contaminants including materials that may damage the equipment (such as large metal objects, dirt and rock). Contaminants are removed, and directed back onto the MSW tipping floor for disposal at the landfill. Loads that are heavily contaminated may be directed to the MSW tipping floor for further sorting or disposal.

Clean materials are shredded with a hammermill-type shredder. Following shredding, the materials are fed onto a conveyor and passed under a magnetic crossbelt conveyor, for removal of small pieces of ferrous metal, such as nails. The smaller materials (fines) are separated from the larger materials (overs) using a vibratory screen.

Yard trimmings overs, fines and wood overs are separated and bulked outside the west-end of the wood processing building. Wood overs are sent to market as a fuel product or for other uses. The yard trimming overs and fines will be used as feedstock for compost, mulch, and bulking agent for sludge composting operations or other purpose acceptable to the City.

3.1.8 Buyback/drop-off Center

A buyback /drop-off center is also part of the SMaRT Station and is located on the south side of the facility. The goal of the center is to allow the general public an opportunity to recycle their own material and receive market prices for those materials of value. The center, including parking, is 12,000 square feet in size and is designed to handle approximately 40 vehicles per hour. The buyback center is certified to redeem California Redemption Value materials and the drop-off area is set up to accept a variety of materials that are listed in Section 4.2.6 of this RFP.

3.1.9 Hazardous Waste Storage Area

The SMaRT Station is not designed nor permitted to accept hazardous wastes of any kind. However, during the course of normal operation it is anticipated that some hazardous materials will be found during screening of random loads required by the Hazardous Waste Exclusion Program (HWEP), and thereafter in processing operations. Hazardous material found through the HWEP and any other hazardous material discovered at the facility will be stored in a hazardous materials storage container, located in the southeast corner of the facility. The storage container is 600 square feet in size, and double contained.

3.1.10 Offices and Visitor Center

The SMaRT Station includes administrative offices and a visitor center. The offices and visitor center are 6,000 square feet in size and are located at the west end of the facility. This building includes a lobby and reception area, office area, restrooms, orientation/training room, shower and locker rooms and a break room.

The City has exclusive use of approximately 675 square feet of office space at in the office/visitor center for approximately six employees. The selected contractor will provide, at no cost to the city, utilities (with the exception of telephone service), and janitorial and building maintenance services to this portion of the office/visitor center. The City will provide at its expense, telephones and other communications equipment, furniture, computers office supplies and moveable partitions. The City has plans to expand the office building by square feet in 2008.

3.1.11 Scale House

The facility's entrance includes a scale house and two inbound truck scales where public haul fees are collected and hauler vehicles are weighed and recorded. A third scale is located in the outbound lane to weigh all outbound loads and certain empty vehicles for which tare weights are not used. The scale house will be operated by the selected Contractor. The scale house has two fee windows for MSW collection vehicles. An additional booth is available for use for the general public, but has not been used for that purpose to date. The selected contractor is required to furnish a portable emergency generator for use at the scale house in the event of a power outage.

3.1.12 Radiation Monitors

Two sets of radiation monitors are located at the inbound lanes to the scales. These monitors operate 24/7 and require minimal operator interaction. The monitors are connected to electronics inside the scale house which provide information regarding the system status and additional information in the event of an alarm. Information regarding the radiation detection program at the SMaRT Station is located in Exhibit _____ to the operating agreement.

3.1.13 Facility Parking and Vehicle Maintenance

The facility has parking on the west side for visitors and employees. There is additional employee parking on the south side of the facility. The selected contractor may park empty transfer vehicles in the fenced and paved operational area of the SMaRT Station, which does not include the office parking lot. The facility has a vehicle maintenance area that is 2,000 square feet in size and is located on the north side of the main building. This facility is designed for repairing and maintaining rolling stock (loaders, forklifts, scissors lifts) only and is not designed for maintaining stationary equipment or transfer vehicles.

3.1.14 Other Facility Amenities

The SMaRT Station is equipped with an overhead sprinkler system and fire suppression equipment. Sanitary facilities are located in the administration building and in the main building near the compactor. The administration building includes locker rooms with showers for employees and a break room. The SMaRT Station is double plumbed. Potable water is used in the washroom basins, drinking fountains and the wash down hoses on the tipping floor, while the toilets and the facility's landscape irrigation system use recycled water.

3.1.15 Electrical Requirements

The facility includes a 1500 KV transformer with an installed motor horsepower at 480 volt, three phase 1505 HP. The following are the basic electrical requirements to determine the costs associated with electrical power usage.

Transfer truck compactor	230 HP
Wood waste area	500 HP
Process sort lines	700 HP [DAK: City to verify]
Exhaust fans	75 HP
Total	1505 HP
Top load conveyor	200 HP
480 volt HID lighting	95 KW
480 – 120/208v transformers	285 KV

Notes:

1. Motor full loaded demand estimate = 60-70%
2. 120/208V transformer demand will vary and could be as low as 60%.

In the event that power from PG&E is not available the facility also has a 400 volt 1500 KW emergency generator (auto-start) which provides enough power to run the lights and compactor load out area. The selected Contractor is required to maintain a smaller generator to provide power to the scale house in the event of a power outage.

3.1.16 Wastewater Discharge Requirements

Process water generated at the SMaRT Station cannot be discharged to the sanitary sewer due to its physical/chemical characteristics. The selected Contractor will be responsible for the proper management of all process water generated at the SMaRT Station, and all associated costs. Water from the tipping floor, conveyor pits and MRF area is accumulated in a sump near the compactor. From there the wastewater is pumped into a holding tank and then into

tanker trucks and hauled off-site for treatment. Historical information related to the profile and quantities of wastewater generated at the facility is provided in Appendix F.

3.2 STATIONARY EQUIPMENT

The SMaRT Station is equipped with stationary equipment that the City owns. It will be the selected Contractor's responsibility to maintain this equipment as described in Section 3.09 and Exhibit J of the Agreement. Figures A-6 and A-7 in Appendix A detail where stationary equipment is located. The stationary equipment to be provided by the City, along with an overview of that equipment, is listed in Appendix H of this RFP.

The City is currently working on a project to re-design the MRF and install new equipment. The selected contractor will be required to maintain this new MRF equipment which will be added to Exhibit H-1 of the Agreement. A detailed list of the new equipment will not be available until after August 1, 2006. The 90% design drawings for the new MRF equipment is shown in Figure of this RFP.

SECTION 4. SMaRT STATION OPERATION

It is the selected Contractor's responsibility to operate the facility in accordance with the Agreement with the City. The minimum SMaRT Station operating requirements are listed below. References are made to the corresponding sections of the Agreement which provide specific detail for each requirement.

4.1 GENERAL OPERATIONS

4.1.1 Operating Hours

The selected Contractor will operate the facility during the hours specified in Section 3.03 of the Agreement.

4.1.2 Facility Personnel

The selected Contractor will staff the facility with qualified personnel to perform the work as specified in Section 3.10 of the Agreement. Proposers must list the number of employees when completing Proposal Form 7. The current number of employees, by job classification and wage rate, is included in the CD-Rom Attachments. These attachments also include an estimate of the number of employees that will be needed to operate the new MSW processing equipment.

4.1.3 Facility Personnel - Prevailing Wages

The selected Contractor shall pay its drivers, maintenance workers, laborers, sorters, and shop employees wages and benefits per Section 3.10 of the Agreement.

4.1.4 Facility Personnel Training and Safety

The selected Contractor will be responsible for training personnel on how to operate and maintain the facility and its equipment, and on health and safety procedures. Each proposal must include a description of the safety training programs, health and safety manual, and other components of the Proposer's health and safety program including emergency procedures for operating the facility. Hazardous material handling procedures must also be included. See Proposal Form 9.

4.1.5 Permits and Regulations

Appendix H contains a list of all current permits necessary for operation of the SMaRT Station. If new operating permits and approvals (or amendments to the permits and approvals

obtained by the City) become necessary during the term of the Agreement by virtue of the selected Contractor's operations it will be the responsibility of the selected Contractor to obtain them. The City will assist the selected Contractor in obtaining them, provided that the operations that give rise to the need for them are in compliance with the Agreement (See Section 3.06 of the Agreement). Permits are available for review at the City's offices.

4.1.6 Transfer/Processing Report

A copy of the Processing/Transfer Report for the SMaRT Station is provided in Appendix I. The transfer processing report describes and/or restricts the operation under the Solid Waste Facility Permit (SWFP) issued by the California Integrated Waste Management Board.

4.2 MATERIAL PROCESSING OPERATIONS

4.2.1 General

The selected Contractor is required to receive, process, and transfer the Participating Agencies' MSW and source-separated recyclable materials. The selected Contractor will accept and/or process the following materials within the facility:

- MSW
- Special Waste (e.g. tires, mattresses, refrigerators, etc.) check for definition and under 3.1.4.
- Universal Wastes (e.g. used motor oil, CRTs, Universal Waste Electronic Devices, Consumer Electronic Devices, fluorescent lamps, batteries)
- Source-separated Recyclable Materials
- Source-separated wood and yard trimmings
- Recyclable Materials brought to the buyback/drop-off center

The selected Contractor will be responsible for transferring unrecovered MSW to the Kirby Canyon Landfill and marketing and transporting recovered recyclable materials to acceptable recyclers, processors or end users in accordance with Section 4.01 of the Agreement. Figure 4-1 presents a diagram of material flow to and from the SMaRT Station.

The selected Contractor will be responsible for removing and arranging for the proper disposal or recycling of CFCs, compressor oils, and mercury switches from appliances recovered at the SMaRT Station at its own expense.

4.2.2 MSW Processing

The selected Contractor will employ its best efforts to recover and divert the maximum quantity of recyclable materials from the franchised and publicly hauled MSW accepted at the facility. The selected Contractor will not be required to process every load of MSW delivered to the SMaRT Station. However, the selected Contractor must maintain at least the minimum MSW recycling rate of 17.5% in accordance with Section 3.05B of the Agreement.

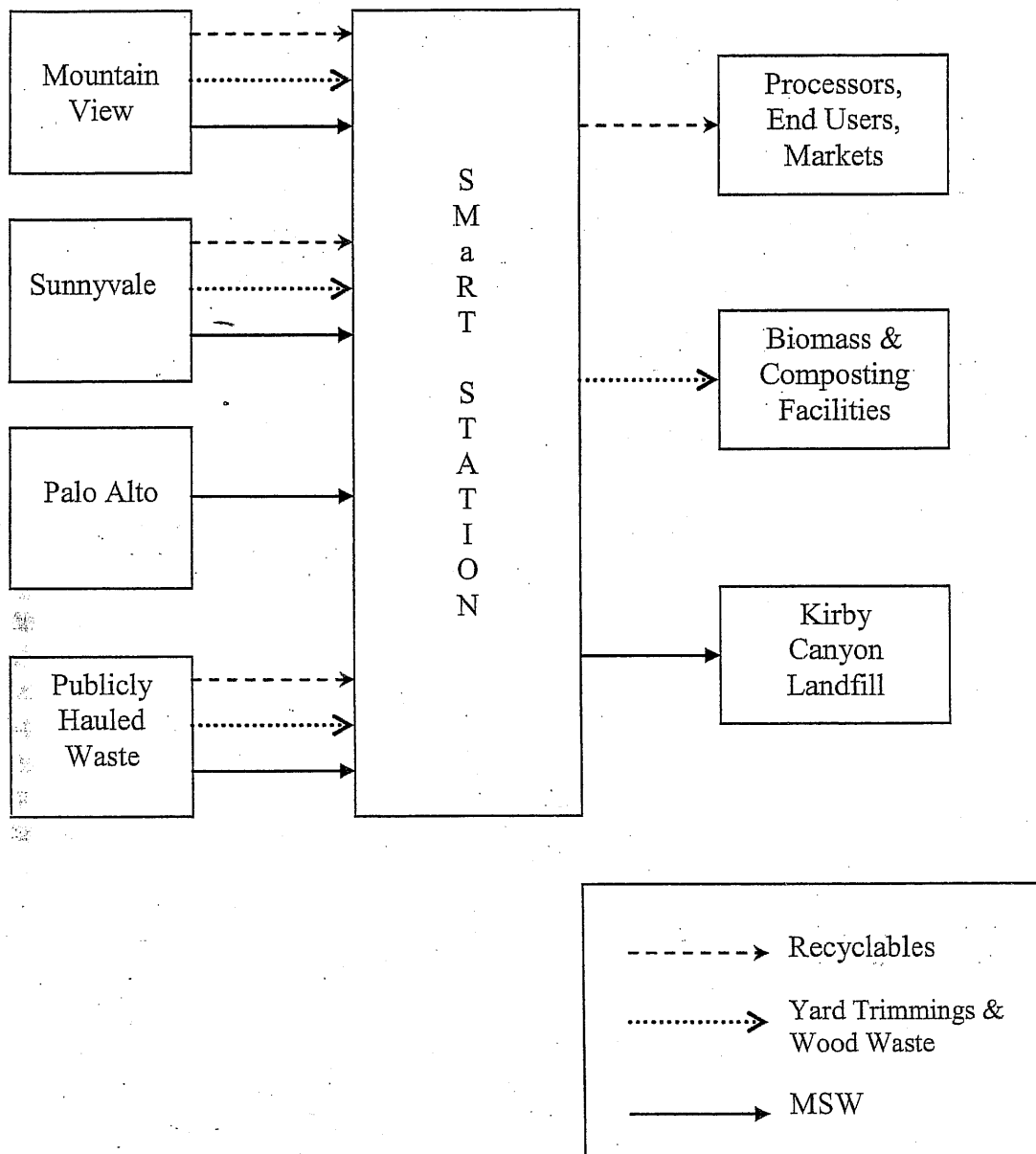
The selected Contractor is required to accept and store wood and yard trimming materials from the tipping floor including tree trimmings, untreated wood roof shingles, lumber, pallets, similar timber products, and compostable materials. Processing of this material will be done onsite in a designated area.

4.2.3 MSW Processing Equipment

The City is currently preparing to install new MSW processing equipment. The design and plans are 90% complete. Plans (90% complete) for the equipment are included as Figure A-6. Descriptions and specifications for the equipment, based on the 90% complete design, are included in Appendix G.

It is the intention of the City to have the new equipment installed before the Agreement takes effect on January 1, 2008. All Proposers are required to submit an alternative annual Contractor's Payment to be utilized in the event that the MSW processing equipment is not installed when the Agreement takes effect. If the MSW processing equipment is not installed, the Contractor will not incur operating and maintenance costs related to that equipment. Furthermore, the Contractor may not be able to meet the minimum diversion requirement of 17.5%, and would therefore not receive a share of the recyclables revenue during that time. If this alternative annual Contractor's Payment is utilized, it will be pro-rated to the day that the MSW processing equipment is fully installed. In the event of a dispute regarding the date of installation, the City's Public Works Director shall have the sole authority to determine the exact date that the installation of the MSW processing equipment is complete, this determination shall not be unreasonable.

Figure 4-1
Material Flow Diagram for SMaRT Station



4.2.4 Delivery of MSW and Source-separated Materials

The following is a brief description of how each City currently collects MSW and recyclables. The Participating Agencies reserve the right to change their collection methods and/or the mixes of source separated materials delivered to the facility for processing.

Sunnyvale:

Residential solid waste is collected using side loaders, front loaders and rear loaders.

Commercial solid waste is collected using front loaders, compactors and debris boxes.

Yard trimmings are collected using side loaders and front loaders.

Single-family recyclables are collected using side-loaders with 2 compartments. Materials are delivered to the SMaRT Station in the following components: (1) newspaper, (2) mixed rigid containers (aluminum, tin glass and mixed plastic containers), (3) cardboard (4) motor oil and oil filters, and (5) household batteries. Materials are unloaded from the rear of the vehicle.

Multi-family recyclables are collected side-loaders with 2-compartments. Materials are delivered to the SMaRT Station in the following components: (1) newspaper, (2) mixed rigid containers, (3) motor oil and oil filters, and (4) household batteries. Materials are unloaded from the rear of the vehicle.

Mountain View:

Residential solid waste is collected in side-loader and rear-loader trucks.

Commercial solid waste is collected using front loaders, compactors and debris boxes.

Yard trimmings are collected using side loaders.

Single-family and multi-family recyclables are collected using rear-dump vehicles. Materials are delivered in the following components: (1) mixed paper, (2) mixed rigid containers, (3) cardboard, and (4) household batteries.

Mixed commercial recyclables are collected in front-loader vehicles, and are delivered to the SMaRT Station in a single stream of fiber and containers.

Palo Alto:

Residential solid waste is collected using front loaders.

Commercial solid waste stream is collected using front loaders, compactors and debris boxes.

Single-family and commercial recyclables are collected using rear-dump vehicles. If Palo Alto chooses at a later date to use the SMaRT Station for processing its curbside recyclables, materials would be delivered to the SMaRT Station in a single stream of mixed recyclables (e.g. newspaper, mixed paper, and mixed containers).

Yard trimmings are collected using front loaders.

4.2.5 Source-separated Recyclable Materials Processing (check definition in contract)

The selected Contractor will accept and process recyclable materials from the cities of Sunnyvale and Mountain View residential curbside, multi-family and commercial recycling programs and arrange for sale of the materials to acceptable recycling facilities, processors or end users as specified in Sections 3.05C and 3.16 of the Agreement. Recyclable materials currently collected include glass, tin and steel cans, aluminum cans, metal food trays, plastic bottles and containers, corrugated cardboard, mixed paper, newsprint, used motor oil and oil filters and household batteries. This material does not count towards the 17.5% minimum recycling guarantee.

The City of Palo Alto is not expected to bring its single stream curbside Recyclable Materials to the SMaRT Station for processing at this time. If, however, this material, or additional commercial recyclables from any of the Participating Agencies are delivered to the SMaRT Station in the future, the selected Contractor will be required to process this material, as directed by the City. Palo Alto's contract with its current recyclables collector and processor will expire July 1, 2009 unless extended.

Should the City of Palo Alto direct its Recyclable Materials to the SMaRT Station, the Contractor would be compensated in the same manner as for Recyclable Materials from the other Participating Agencies: The Contractor will receive no tipping fee for accepting and processing the Recyclable Materials. The Contractor will receive a share of the revenues from the sale of Recyclable Materials (sliding scale based on MSW recovery rate achieved by Contractor)

In addition, all Proposers are required to submit two sets of Tipping Fees for Excess Tonnage: One set that will be utilized in the event that Palo Alto's Recyclable Materials are directed to the SMaRT Station, and another set that will be utilized if Palo Alto's Recyclable Materials are not directed to the SMaRT Station. Because Palo Alto's Recyclable Materials will generate additional revenue for the Contractor, the City anticipates that the Tipping Fees for Excess Tonnage will be lower if the Palo Alto Recyclable Materials are directed to the SMaRT Station.

4.2.6 Buyback/Drop-off Center

The selected Contractor will operate a buyback/drop-off center that will accept the following materials:

- Newsprint
- Glass bottles, jars and other beverage containers

- Aluminum
- Metals
- Corrugated cardboard and Kraft paper
- High grade office paper
- Mixed paper
- Plastic containers 1--7
- Used motor oil from residential users
- Used automobile oil filters
- Anti-freeze
- Automotive batteries
- Household batteries
- Fluorescent light bulbs and tubes
- Household items containing mercury (e.g. thermometers and thermostats)
- Universal Waste Electronic Devices and Consumer Electronic Devices
- Any new California Redemption Value (CRV) containers designated by the State in the future
- Other materials as approved by the City

City and contractor will discuss the feasibility of providing reuse services at the drop-off area.

The selected Contractor will also provide, in the vicinity of the buyback/drop-off center, a City approved bin for drop off of "sharps" (needles, lancets, etc.) by members of the general public at no charge. The bin shall be designed with a chute, such that materials can be deposited, but cannot be removed from the chute. The selected Contractor will be responsible for arranging for disposal of the "sharps" at an appropriate facility approved by the City, and will be reimbursed for the cost of proper disposal by the City.

Material accepted at the buyback/drop-off center does not count towards the 17.5% minimum recycling guarantee. Certain materials accepted at the drop-off area may be limited to residential users as directed by the City.

4.2.7 Yard Trimmings and Wood Waste Processing

The selected Contractor will be expected to process the wood and yard trimmings collected by the cities of Sunnyvale and Mountain View residential yard trimmings programs. This

material does not count towards the 17.5% minimum recycling guarantee. The selected Contractor will also process wood and yard trimmings which are segregated from incoming loads of MSW through the use of the MSW processing lines. This material does count towards the 17.5% minimum recycling guarantee.

Source-separated wood and yard trimmings from the City of Palo Alto's residential collection program are not expected to be processed at the SMaRT Station at this time. If, however, this material is delivered to the SMaRT Station in the future, the selected Contractor will be required to process this material, as directed by the City. The City of Palo Alto currently generates 16,000 tons per year of source separated wood and yard trimmings. This material is processed at the City of Palo Alto's composting facility which is scheduled to close in 2011.

The selected Contractor shall ensure that all source separated yard trimmings and wood delivered to the SMaRT Station, and all yard trimmings and wood segregated from incoming loads of MSW, are diverted from landfill disposal. Yard trimmings and wood from the SMaRT Station may not be utilized as alternative daily cover or for any other "beneficial use" at a landfill. With prior written approval from the City of Sunnyvale, yard trimmings and wood waste from the SMaRT Station may be utilized as fuel at a traditional biomass facility in which clean, segregated, woody materials are used to generate electricity. Any composting facility utilized by the selected Contractor to process yard trimmings, wood, or other organic materials from the SMaRT Station must be approved of in advance, in writing, by the City of Sunnyvale. The City of Sunnyvale reserves the right to direct the selected Contractor to utilize a different composting facility given twelve months written notice.

The selected Contractor will bear the direct cost of diverting from landfill the yard trimmings, wood or other organics from the SMaRT Station. In the likely event that the selected Contractor must pay a third party to divert some or all of these organic materials, the cost of such payments will be treated as "negative recyclables revenue" and shall be shared with the SMaRT Cities as set forth in Section 5.2.3 of this RFP.

4.2.8 Transfer of Non-Recoverable Solid Waste

The SMaRT Station is designed to load non-recoverable solid waste into transfer vehicles by using a compactor. A top loading conveyor has also been included in the event that the compactor is not working and solid waste must be manually loaded into open top transfer vehicles.

4.3 TRANSFER VEHICLE LOGISTICS

4.3.1 Transfer Trailers

The SMaRT Station utilizes a compactor as the primary means of loading transfer vehicles. Therefore, the selected Contractor must purchase open top-walking floor transfer trailers that are capable of being loaded from both the rear by the facility's compactor, and/or top loaded using the facility's top load conveyor system.

4.3.2 Turnaround Time ---remove

The selected Contractor will comply with the vehicle turnaround times for weighing, unloading and exiting the SMaRT Station as specified in Section 3.12 of the Agreement.

4.3.3 Vehicle Weighing

The selected Contractor will maintain and operate scales at the SMaRT Station as specified in Section 3.13 of the Agreement. All outbound loads must be weighed. All outbound MSW loads must be weighed both as they leave SMaRT Station and as they enter the Kirby Canyon Landfill. The selected Contractor shall provide all hardware and software necessary to record all inbound and outbound loads at the SMaRT Station and to produce reports to the City in the required format. Examples of acceptable monthly Contractor reports are provided in Appendix K.

4.3.4 Vehicle Parking, Fueling & Maintenance and Cleaning

The SMaRT Station is not designed to allow for maintenance, fueling, and cleaning of transfer vehicles. The selected Contractor will be responsible for securing a location off-site to perform these functions. The selected Contractor may park empty transfer vehicles in the fenced and paved operations area of the SMaRT Station when not in use, however, maintenance, changing of fluids and cleaning of vehicles will not be permitted at this location as specified in Section 4.02 of the Agreement. All loaded/preloaded transfer trailers, containing MSW must be parked on the tipping floor so that any liquid from the MSW that leaks from the vehicle remains on the tipping floor.

4.4 EQUIPMENT AND FACILITY OPERATION AND MAINTENANCE

4.4.1 Equipment

The City owns all stationary equipment at the SMaRT Station such as conveyors, balers and densifiers. It will be the selected Contractor's responsibility to properly clean, maintain and

repair this equipment as described in Exhibit J of the Agreement. The selected Contractor will be required to purchase, own and maintain all rolling stock for the SMaRT Station. At a minimum, the selected Contractor must provide the equipment listed on Proposal Form 10 of this RFP which will become Exhibit H-2 of the Agreement. The selected Contractor must provide the transfer vehicles utilized to deliver MSW to the Kirby Canyon Landfill. The selected Contractor may utilize third-party trucking companies to transport outbound recyclable commodities such as yard trimmings, wood chips, paper, metal, plastic, glass, etc. The selected Contractor is also responsible for maintaining existing site security cameras, and installing additional cameras, as necessary, for purposes of assuring adequate site security.

4.4.2 Facility Operation and Maintenance

The selected Contractor will be required to perform routine cleaning and preventive maintenance of all equipment, buildings, parking lots, and access roads per Exhibit J of the Agreement. The selected Contractor will also be required to operate the SMaRT Station in accordance with standards and procedures as specified in Exhibit J of the Agreement.

4.5 HAZARDOUS WASTE EXCLUSION

The selected Contractor is responsible for inspecting and removing hazardous waste from incoming vehicle loads as provided in Section 3.08 of the Agreement and all applicable law. The selected Contractor is also responsible for proper management and disposal of any accumulated hazardous wastes that are inadvertently accepted at the facility or delivered to Kirby Canyon Landfill, in accordance with Section 3.08 of the Agreement. The selected Contractor will be required to implement a Hazardous Waste Exclusion Program (HWEP) as described in Section 3.08 of the Agreement.

Note that hazardous waste produced by the selected Contractor (e.g., oil and anti-freeze from rolling stock, grease, sheets used in cleaning equipment, etc.) is the responsibility of the selected Contractor. No compensation will be provided to the selected Contractor for the proper management of any such waste that is generated.

4.6 MITIGATION MEASURES

The selected Contractor will be required to implement the applicable mitigation measures for blowing debris, vector control, odor, dust and noise, and fire control, as specified in the FEIR and Exhibits F and J of the Agreement.

4.7 COLLECTION OF FEES

The selected Contractor will be responsible for collection, accurate record keeping and reporting and delivery to the City, of all fees paid to the SMaRT Station, in accordance with Section 3.14 of the Agreement.

4.8 SALE OR TRANSFER OF RECYCLABLE MATERIALS

The selected Contractor will be responsible for storing, marketing, and shipping all materials recovered from MSW or source-separated materials received at the SMaRT Station. The City reserves the right to terminate the selected Contractor's usage of any material recipient (i.e. recycler, recycling facility, material broker, or end user) purchasing or receiving any materials from the SMaRT Station in the event that the material recipient is disposing or otherwise improperly processing the materials. The selected Contractor must ship all materials for sale within 90 days of diversion unless City provides a written exemption for that material. Recyclable materials shall not be landfilled under any circumstances unless so directed by the City. Refer to Section 3.16 and Section 4.01 of the Agreement for specific details on terms for marketing of recovered material.

4.9 OPERATION PERFORMANCE GUARANTEES

The selected Contractor will be required to achieve the minimum recycling level of 17.5% calculated as described in Exhibit S of the Agreement.

4.10 PERFORMANCE BOND

As security for performance under the terms of the Agreement, the selected Contractor will be required to furnish a performance bond in the amount of two million dollars (\$2,000,000). Refer to Section 7.03 of the Agreement for specific provisions on the performance bond.

4.11 ENVIRONMENTAL PROCUREMENT POLICY

The City of Sunnyvale has established an Environmental Procurement Policy to, among other things, promote the use of environmentally preferable products. The selected Contractor will be required to adhere to the City's Environmental Procurement Policy as specified in Section 10.23 of the Agreement.

4.12 CLEAN AIR FUELS AND RECYCLED MOTOR OIL

Clean air fuels are those fuels which minimize harmful air emissions from equipment. Examples of clean air fuels include, but are not limited to, electricity, propane, liquid natural gas (LNG) compressed natural gas (CNG) and biodiesel. The selected Contractor will be required to utilize clean air fuels in its forklifts, pick-up trucks, and all other rolling stock provided by the Contractor, excluding loaders and transfer vehicles. Proposal Forms 11 and 12 must assume transfer vehicles and loaders powered by standard diesel fuel, with all other rolling-stock powered by a clean air fuel. Proposal Form 18 must specify the type of clean air fuel to be used in all rolling stock excluding loaders and transfer vehicles.

In addition, each Proposer shall utilize Proposal Form 18 to submit an alternative cost proposal for fueling loaders and transfer vehicles utilizing a clean air fuel of the Proposer's choosing. On Proposal Form 18, Proposer shall state the difference, if any, that utilizing the proposed clean air fuel would cause in its proposed annual compensation and the per ton compensation for additional tons should the City choose to select this alternative. A Proposer may, at its own option, elect to propose two or more different types of clean air fuels for loaders and transfer vehicles, itemizing the corresponding impact on proposed compensation for each.

The selected Contractor will also be required to utilize recycled motor oil in all rolling stock. Upon request, the City will provide Proposers with information on how to obtain recycled motor oil.

SECTION 5. BUSINESS AND FINANCIAL ARRANGEMENTS

5.1 TERM OF AGREEMENT

The Agreement described in this RFP contemplates the selected Contractor operating the SMaRT Station for seven years. At the City's option the term of the Agreement may be extended for one or more periods of three months, up to a maximum of one year as described in Section 2.03 of the Agreement.

5.2 PAYMENT ARRANGEMENTS

Figure 5-1 presents a diagram of the cash flow associated with SMaRT Station operations.

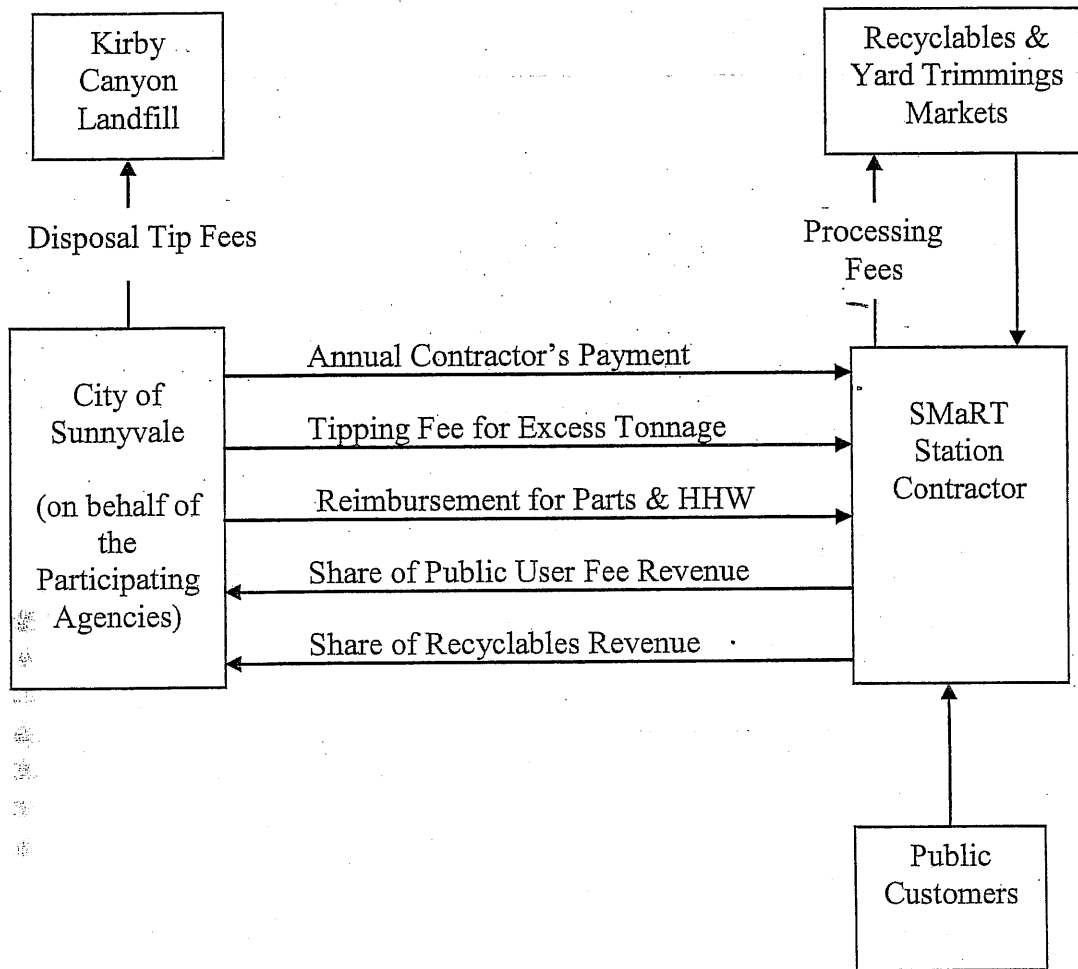
5.2.1 City's Payments

The City's sole payment obligations for all services to be provided under the terms of the RFP and the Agreement shall be limited to the following:

- Payment to the Contractor of a fixed annual Contractor's Payment and adjustments thereto, as described in Article 5 of the Agreement. This payment shall be disbursed in 12 equal monthly payments per year. Monthly payments shall be made in arrears.
- Reimbursement to the Contractor on a per ton basis (Tipping Fee for Excess Tonnage) if the combined tonnage of inbound franchised MSW and yard trimmings exceeds 290,000 tons per year. Proposers shall quote separate Tipping Fees for excess MSW and yard trimmings on Proposal Form 12.
- Reimbursement to the Contractor for spare parts for stationary equipment listed in Exhibit H-1 of the Agreement.
- Reimbursement to the Contractor for disposal costs for hazardous waste and sharps identified by the selected Contractor through the Hazardous Waste Exclusion Program per Section 5.02D of the Agreement and sharps collected from the public at the drop-off area. This does not include hazardous waste generated by the selected Contractor and CFCs, compressor oils and mercury containing switches removed from appliances delivered to the SMaRT Station which are to be handled at the selected Contractor's expense.

In addition, please note that the City is solely responsible for compensating the Kirby Canyon Landfill for disposal of all MSW delivered by the Contractor from the SMaRT Station to the Kirby Canyon Landfill. The Kirby Canyon Landfill bills the City directly for disposal. The Contractor is not involved in the disposal payment.

**Figure 5-1
Cash Flow Diagram for SMaRT Station**



5.2.2 Payment to the Selected Contractor

5.2.2.1 Annual Contractor's Payment

City shall pay the Contractor a fixed annual Contractor's Payment and adjustments thereto, as described in Article 5 of the Agreement. This payment shall be disbursed in 12 equal monthly payments per year. Monthly payments shall be made in arrears. This payment is compensation to the Contractor for accepting, processing, and transferring up to 290,000 tons per year of franchised MSW and yard trimmings from the Participating Agencies.

5.2.2.2 Tipping Fees for Excess Tonnage

Should the combined tonnage of franchised MSW and yard trimmings accepted at the SMaRT station exceed 290,000 in any given fiscal year, the selected Contractor will be compensated for the additional tons at the Tipping Fees set forth in Article 5 of the Agreement. Separate Tipping Fees shall be used for excess tons of MSW and Yard Trimmings.

5.2.2.3 Contractor's Share of Public Use Fee Revenue

The City establishes Public Use Fees for publicly hauled (non-franchised) wastes. The Public Use Fees vary by material type and are all greater than \$5.50 per cubic yard. The Contractor's Share of Public Use Fee Revenue for all material types shall be \$5.50 per cubic yard multiplied by the number of cubic yards delivered. The selected Contractor will collect Public Use Fee revenue from public customers, retain \$5.50 per cubic yard, and remit the remainder of the Public Use Fee Revenue to the City.

5.2.2.4 Liquidated Damages

The City of Sunnyvale may deduct from selected Contractor's payment liquidated damages as set forth in the provisions of Section 9.06 of the Agreement.

5.2.2.5 Inflation Adjustment

The annual Contractor's Payment, Tipping Fee for Excess Tonnage and Contractor's Share of Public Use Fee per cubic yard will be adjusted for inflation each fiscal year per Section 5.03 of the Agreement.

5.2.3 Revenues from Sale of Recyclable Materials

The selected Contractor collects all gross revenues from processors and end-users from the sale of recyclable materials and remits to the City of Sunnyvale a portion of the gross recycling revenue. The percentage of the gross revenues that the Contractor remits to the City shall be as specified in Exhibit O-13 of the Agreement, and includes revenues derived from:

- Materials recovered by the selected Contractor from MSW;
- Source-separated Recyclable Materials delivered by the Participating Agencies' franchised haulers;
- Source-separated wood and yard trimmings delivered by the Participating Agencies' franchised haulers; and
- Recyclable materials delivered to the buyback/drop-off center.

The selected Contractor shall pay to the City, on a monthly basis, the City's share of all revenues received during the preceding month. In the event that the selected Contractor incurs a disposition cost to market recyclable materials recovered at the SMaRT Station for recycling, whereby the selected Contractor must pay the material broker or end user a fee for disposition of a materials shipment, the selected Contractor will pay a percentage of the total disposition cost equal to that specified in Exhibit O-13 for the "Contractor's Revenue Share." The City will pay a percentage equal to the "City's Revenue Share." For example, if one month the selected Contractor received \$100,000 in revenue from the sale of paper, metal, and plastic, and paid \$25,000 to a composting facility to recycle yard trimmings, the total recyclable materials revenue for that month would be \$75,000. This revenue will be shared between the Contractor and the City based upon the formula specified in Exhibit O-13 of the Agreement. The handling of material disposition costs when no markets exist is specified in Section 3.16.C.5 of the Agreement.

When calculating recyclables revenue, Contractor shall use revenues accrued at the time of the invoice. Uncollectible receivables are the Contractor's responsibility. The Contractor shall have 120 days after submitting its monthly compensation invoice to the City to make any adjustments to the reported recyclables revenue.

5.2.4 Invoicing and Reporting Requirements

The selected Contractor will be required to provide monthly reporting of all MSW and recyclable materials received at, and transferred from, the facility in a format acceptable to the City. Beginning in February 2008, and on a monthly basis thereafter, the selected Contractor will be responsible for preparing and submitting, in a form prescribed by the City per Section 5.07 of the Agreement, an invoice indicating the amount due and payable by the City for services rendered in the prior month. The City shall pay the amount due the selected Contractor, when submitted on a proper invoice, less liquidated damages, if any, in accordance with payment procedures described in Article 5 of the Agreement. In the event of a dispute over an invoiced amount, the procedures described in Article 5 of the Agreement will be followed.

5.3 DEFAULTS AND REMEDIES

Article 9 of the Agreement identifies the specific Event(s) of Default, as well as the remedies available to the non-defaulting party should any such Event of Default occur.

5.4 INSURANCE REQUIREMENTS

The selected Contractor will be required to maintain insurance in effect during the term of the Agreement in accordance with the terms set forth in Section 7.02 of the Agreement.

SECTION 6. PROPOSAL REQUIREMENTS AND EVALUATION

This section provides information on the following issues:

- Organization of information to be included in the Proposal Package
- Proposer qualifications
- Proposal evaluation criteria

6.1 PROPOSAL PACKAGE CONTENT AND ORGANIZATION

Proposers must provide adequate description and documentation supporting:

- Corporate and Project Team Qualifications,
- Financial Qualifications, and
- Plans for Operation of the SMaRT Station and Marketing of Recovered Materials.

A brief description of the minimum information to be included in the proposal package is presented below. Note that each description corresponds to the Proposal Forms provided in Appendix B. The proposal package must include all the completed Proposal Forms and associated supporting documentation. The Proposal Transmittal Letter (Proposal Form 1) must be notarized.

Proposers must complete and submit the following Proposal Forms that are included in Appendix B.

1. Proposal Transmittal Letter
2. General Proposer Information, Background, Experience and References
3. Detailed Project Experience:
 - 3A – MSW Processing Operations
 - 3B – Recyclable Materials Processing Operations
 - 3C - Yard Trimmings and Wood Waste Processing and Marketing
 - 3D - Materials Marketing
 - 3E - Long-Haul Transport
4. Structure of Project Team
5. Resumes
6. Financial Statements
7. List of Personnel and Subcontractors
8. Proposal Security Bond
9. Description of Health and Safety Plan and Hazardous Waste Identification, Handling, and Storage Procedures
10. List of Equipment (Rolling Stock) to be Furnished by Proposer

11. Annual Operating Cost
12. Annual Contractor's Payment and Tipping Fees for Excess Tonnage
 - 12A Annual Contractor's Payment – MSW Processing Equipment Installed
 - 12B Annual Contractor's Payment – MSW Processing Equipment Not Installed
 - 12C Tipping Fee for Excess MSW Tonnage (without Palo Alto Recyclables)
 - 12D Tipping Fee for Excess Yard Trimmings Tonnage (without Palo Alto Recyclables)
 - 12E Tipping Fee for Excess MSW Tonnage (with Palo Alto Recyclables)
 - 12F Tipping Fee for Excess Yard Trimmings Tonnage (with Palo Alto Recyclables)
13. Materials Recovery and Marketing Plan
14. Anti-Collusion Affidavit
15. Pending Litigation
16. Exceptions to Proposed Agreement
17. Identification of Surety
18. Clean Air Fuels Plan
19. Maintenance Plan

6.2 PROPOSER QUALIFICATIONS

In order to qualify as a Proposer, the minimum technical experience and financial qualifications described below must be met.

6.2.1 Technical Experience

Proposers shall use Proposal Forms 2 and 3 to demonstrate their technical experience. Proposers must have been in existence for no fewer than three (3) years and possess no fewer than two (2) years of actual operating experience in solid waste processing, materials recovery and recycling, and solid waste transfer. Proposers may not be in default on any contract obligations during this period. In the case of joint venture or partnership proposals, at least one member of the team must meet the experience requirement and no members can be in default.

6.2.2 Financial Qualifications and Bond Requirements

Proposers must describe the financial condition and strength of the company and/or joint venture. The description will include audited financial statements covering the last three years (Proposal Form 6).

Proposers must comply with the bonding requirements of the RFP as follows:

- Furnish, as proposal security, a proposal bond issued by a company admitted in California and subject to _____ by the California insurance commissioner, in the amount of \$100,000 (Proposal Form 8).
- Provide the name of a surety company admitted in California that is prepared to furnish a performance bond consistent with the requirements of Section 7.03 of the Agreement (Proposal Form 17).

6.2.3 Corporate and Project Team Experience and Qualifications

Corporate Qualifications

Proposers must provide as evidence of prior experience:

- References who can verify that the Proposer has successfully operated projects involving the handling, transfer, and recovery of MSW (Proposal Form 2).
- References who can verify that the Proposer has material recovery, marketing and long haul transfer experience (Proposal Form 2).

Project Team Experience

Proposers must provide as evidence of project team experience:

- An organization chart for operating the SMaRT Station, detailing the responsibilities of key team members and personnel (Proposal Form 4).
- A list of all principals and owners of the project team, their subcontractors, and all the parties' relationship to the project, including a complete resume of the facility manager and other key members of the operation management team (Proposal Forms 5 and 7).
- A list of other projects involving material recovery, MSW processing, and transfer station operations with which the project team has had experience, indicating facility capacity, technology, operating methods, ownership, and cost information for each listed project, as well as the degree of involvement of the key project participants. References from jurisdictions served by the projects must also be included (Proposal Forms 2 and 3).

6.2.4 Other Required Submittals

Proposers must also submit the following:

- An affidavit of non-collusion (Proposal Form 14),

- A statement listing any pending litigation (Proposal Form 15).
- Additionally, if the Proposer wants to take any exceptions to the proposed Agreement they must be clearly explained in Proposal Form 16.

6.2.5 Specifications for Operation of SMaRT Station

Proposers are required to submit sufficient documentation that describes and illustrates in detail:

- The operating plan;
- The marketing plan; and
- The basis for the proposed Annual Contractor's Payment and Tipping Fees for Excess Tonnage.

Certain documentation is to be prepared for direct inclusion as Exhibits to the Agreement. References are made below to the specific Proposal Forms and Exhibits.

Operating Plan - The Facility must be operated in such a manner as to achieve the Minimum Recycling Level of 17.5%. Proposers must identify the equipment to be used in handling and transferring all MSW and recyclable materials (Proposal Form 10). Proposers must identify the facility health and safety procedures (Proposal Form 9). Proposers must describe in detail the methods for receipt, handling, loading and unloading, processing and final disposition procedures for all MSW and recyclable materials received at the SMaRT Station (Proposal Form 13), in accordance with the design of the SMaRT Station as represented in Figures A-3, A-4, A-5, A-6, and A-9 (see Appendix A for these Figures). The description provided by the Proposer on Proposal Form 13 will be included as Exhibit B of the Agreement and must specify at a minimum:

- Material receipt, handling, and transfer procedures
- Procedures for recovering recyclable materials from MSW
- Waste hauling plan to transport MSW to Kirby Canyon Landfill
- On-site traffic management
- Recyclable material management, sales, and storage

Marketing Plan - Proposers must provide a description of the marketing plan for recyclable materials including specific personnel requirements, time dedicated to marketing efforts, knowledge of local markets, estimated per ton revenue received for each commodity, etc. The

Marketing Plan must specifically address markets for yard trimmings, wood, and other organics materials targeted for diversion. Proposers must identify the organics composting/processing site(s) to be utilized, the end products that that site(s) will produce, and the tip fees, if any, that the site(s) will charge the Proposer (Proposal Form 13).

Operating Costs - Proposers must provide operating cost justification (Proposal Form 11) demonstrating how these costs are incorporated into the Annual Contractor's Payment and the Tipping Fees for Excess Tonnage (Proposal Form 12).

Clean Air Fuels Plan - Proposers must utilize Proposal Form 18 to: (1) Explain how they will meet the requirement that all rolling stock provided by the Contractor (excluding loaders and transfer vehicles) will be powered by clean air fuels; and (2) Propose one or more clean air fuel alternatives for powering loaders and transfer vehicles, and itemize the cost implications of these alternatives.

Maintenance Plan - Proposers must utilize Proposal Form 19 to describe their maintenance plan for the facility, equipment and rolling stock. This plan shall include a description of types of repairs and maintenance to be performed on-site and off-site, plans for preventive maintenance and plan for unscheduled repairs, and numbers and types of maintenance personnel.

6.3 PROPOSAL EVALUATION CRITERIA

A proposal evaluation team including, but not limited to, members of the City's staff and consultants will evaluate all proposals. Proposals will be rated using the five criteria listed below.

- Experience and qualifications of the Proposer to operate a materials recovery and transfer facility of this size
- Thoroughness, comprehensibility, and adequacy of facility operating, maintenance and marketing plans, and overall proposal approach
- Proposed Annual Contractor's Payment for existing tonnage levels
- Proposed Tipping Fees for Excess Tonnage ; and
- The number, nature, and materiality of exceptions taken to the Agreement

A. Proposer's relevant experience will be evaluated in five separate categories:

- MSW Processing
- Recyclable Materials Processing
- Yard Trimmings and Wood Waste Processing and Marketing

APPENDIX A

SMaRT STATION DESIGN DRAWINGS

Figure A-1	Service Area	[DAK: Have 2000 hardcopy]
Figure A-2	Street Location	[DAK: Have 2000 hardcopy]
Figure A-3	Site General Arrangement	[DAK: Missing]
Figure A-4	Building General Arrangement	[DAK: Missing]
Figure A-5	Mass Flow Diagram	[DAK: need updated version]
Figure A-6	MSW Processing Equipment (90% drawings)	[DAK: Need drawings]
Figure A-7	Source Separated Recyclables Processing Equipment	[DAK: Have CS Genl arrangemt.tif]
Figure A-8	Architectural Main Building Exterior Elevations	[DAK: Have 2000 hardcopy]
Figure A-9	Utilities Plan	[DAK: need updated plan]

APPENDIX B

PROPOSAL FORMS

1. Proposal Transmittal Letter
1. General Proposer Information, Background, Experience and References
1. Detailed Project Experience
 - 3A – MSW Processing Operations
 - 3B - Recyclable Materials Processing Operations
 - 3C – Yard Trimmings and Wood Waste Processing and Marketing
 - 3D - Materials Marketing
 - 3E - Long-Haul Transport
1. Structure of Project Team
1. Resumes
1. Financial Statements
1. List of Personnel and Subcontractors
1. Proposal Security Bond
1. Description of Health and Safety Program/Hazardous Materials Procedures
1. List of Equipment (Rolling Stock) to be Furnished by Proposer
1. Annual Operating Cost
 - Annual Contractor's Payment and Tipping Fees for Excess Tonnage 12A Annual Contractor's Payment – MSW Processing Equipment Installed
 - 12B Annual Contractor's Payment – MSW Processing Equipment Not Installed
 - 12C Tipping Fee for Excess MSW Tonnage (without Palo Alto Recyclables)
 - 12D Tipping Fee for Excess Yard Trimmings Tonnage (without Palo Alto Recyclables)
 - 12E Tipping Fee for Excess MSW Tonnage (with Palo Alto Recyclables)
 - 12F Tipping Fee for Excess Yard Trimmings Tonnage (with Palo Alto Recyclables)
1.
 1. Materials Recovery and Marketing Plan
 1. Anti-Collusion Affidavit
 1. Pending Litigation
 1. Exceptions to Proposed Agreement
 1. Identification of Surety
18. Clean Air Fuels Plan
19. Maintenance Plan

APPENDIX C

AGREEMENT (DRAFT)

DRAFT

AGREEMENT FOR THE OPERATION
OF THE
SUNNYVALE MATERIALS RECOVERY AND
TRANSFER STATION
BETWEEN
THE CITY OF SUNNYVALE
AND

February 2007

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**AGREEMENT FOR THE OPERATION
OF THE
SUNNYVALE MATERIALS RECOVERY AND TRANSFER STATION**

THIS AGREEMENT is made as of this _____ day of February, 2007,
by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter
referred to as the "City") and _____, a
_____ (hereinafter referred to as "Contractor").

RECITALS

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the California Integrated Waste Management Act of 1989, now codified at Public Resources Code Section 40000, *et seq.* (hereinafter referred to as the "Act"), directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal.

2. The City concurs in the aforementioned findings and declarations of the State of California.

3. City entered into an agreement with Waste Management of California, Inc., dated as of September 10, 1991 for long term disposal of solid waste (hereinafter referred to as "Disposal Contract"). The City of Mountain View and the City of Palo Alto (hereinafter collectively referred to as the "Neighboring Cities") also entered into companion agreements with Waste Management of California, Inc. (hereinafter referred to as the "Neighboring Cities' Disposal Contracts"). The Disposal Contract and the Neighboring Cities' Disposal Contracts all contemplate the initial delivery of Municipal Solid Waste from the City and the Neighboring Cities to a materials recovery and transfer station (hereinafter referred to as "Station") for processing, with only the residue which is not recycled then to be compacted and thereafter transported to and

disposed of at the Kirby Canyon Sanitary Landfill in San Jose, which is operated by Waste Management of California, Inc. The recycling operations conducted at the Station, which was constructed by the City, are integral and important components of the City's and the Neighboring Cities' strategies for implementing the Act and are incorporated into each city's Source Reduction and Recycling Element which, in turn, have been incorporated into the Santa Clara County Integrated Waste Management Plan.

4. Acting on its own behalf, and on behalf of the Neighboring Cities, City issued on _____, 2006, a Request for Proposals (hereinafter referred to as "RFP") seeking proposals from qualified firms to operate the Station and to receive and process Municipal Solid Waste and Recyclable Materials from the City and Neighboring Cities (which three (3) cities are hereinafter sometimes collectively referred to as the "Participating Agencies"). City has evaluated all proposals submitted and has determined that the Contractor has proposed to provide operation of the Station (which entails processing materials for reuse and recycling, the marketing of such materials and the transport of nonrecycled waste materials for disposal) in a manner and on terms which are in the best interests of the Participating Agencies and their residents, taking into account the qualifications and experience of Contractor, the level of recycling to which the Contractor is committed, and the cost of providing such services.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1. DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by this reference.

ARTICLE 2. TERM OF AGREEMENT

2.01 Effective Date. The effective date of this Agreement shall be _____, 2007 ("Effective Date").

2.02 Term. The Term of the Agreement shall commence on the Effective Date and shall end at midnight on December 31, 2014, unless extended as provided in Section 2.03. Contractor's obligation to operate the Station shall commence January 1, 2008.

2.03 Option to Extend Term. The City may extend the Term of this Agreement for one (1) or more periods of three (3) months, up to a maximum of one (1) year, on the same terms and conditions. If City wishes to extend the Term it shall deliver a written notice to Contractor at least six (6) months before the expiration of the Term (i.e. on or before June 30, 2014) specifying the number of additional months by which it wishes to extend the Term. If the City initially elects to extend the term for less than twelve (12) months, it may subsequently elect to further extend the term in increments of three (3) months, up to a total of twelve (12) months, i.e. until December 31, 2015. If the City wishes to further extend the term in this fashion it shall deliver a written notice to contractor at least thirty (30) days prior to the expiration of the extended term.

2.04 Conditions to Effectiveness of Agreement. The obligation of the City to perform under this Agreement is subject to satisfaction, on or before the Effective Date, of each and every one (1) of the conditions set out below, which may be waived in whole or in part by City:

A. Accuracy of Representations. The representations and warranties made by Contractor in Article 8 of this Agreement shall be true and correct on and as of the Effective Date, and a certification to that effect dated as of the Effective Date shall be delivered by Contractor to City on the Effective Date.

B. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishing of Bond.** Contractor has furnished the Performance Bond required by Section 7.03.

D. **Furnishing of Guaranty.** Contractor has furnished the Guaranty required by Section 10.23.

E. **Effectiveness of City's Approval.** The City's approval of this Agreement shall have become effective, pursuant to California law, on or before the Effective Date.

In the event that any condition set forth in this Section 2.04 is not satisfied or waived, by the Effective Date, by the City, this Agreement shall be void and shall have no further force or effect. City may waive the satisfaction of conditions described in Section 2.04, allow this Agreement to become effective, and exercise its rights and remedies under this Agreement for Contractor's failure to deliver the bond. Each party is obligated to perform in good faith the actions, if any, which this Agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

ARTICLE 3. OPERATION OF TRANSFER STATION

3.01 Receipt of Municipal Solid Waste and Recyclable Materials.

Commencing on January 1, 2008 and continuing throughout the Term, Contractor shall receive and accept (1) all Municipal Solid Waste and Source-Separated Recyclable Materials delivered to the Station by or on behalf of City, the other Participating Agencies and its or their Designated Haulers; (2) Publicly Hauled Waste generated within the City or within the jurisdiction of the other Participating Agencies; and (3) Source-Separated Recyclable Materials delivered by residents of or businesses operating within the City or within the other Participating Agencies.

Contractor shall process such materials for either Recycling or Disposal in accordance with this Agreement.

3.02 Priority. The basic and primary purpose of the Station is to process Municipal Solid Waste and Recyclable Materials delivered by the Participating Agencies and their respective Designated Haulers, who shall have first priority in use of the Station. A secondary purpose is to process Publicly Hauled Waste and Recyclable Materials delivered by residents and/or businesses of the Participating Agencies, who shall have second priority in use of the Station. If City allows, pursuant to Section 3.04, Municipal Solid Waste or Recyclable Materials generated outside the Participating Agencies to be delivered to and accepted for processing at the Station, such material shall be assigned third priority and Contractor shall operate the Station in order to give effect to the above stated priorities.

Processing of material from outside the Participating Agencies shall, if allowed, never be permitted to interfere with processing of Municipal Solid Waste or Recyclable Materials delivered by or on behalf of the Participating Agencies or their Designated Haulers. To that end, and by way of example and not limitation, City may direct that materials from outside the Participating Agencies not be accepted during peak hours (10 a.m. to 2 p.m.) or when vehicles of Designated Haulers from any of the Participating Agencies are delayed entry beyond the times allowed in Section 3.12. Vehicles carrying materials from outside the Participating Agencies shall be refused entry during such periods.

3.03 Days and Hours of Operation. Contractor shall operate the Station, as specified in this Section, every day of the year except January 1, the fourth (4th) Thursday of November, and December 25 ("the holidays").

Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, the other Participating Agencies and their respective Designated Haulers at least twelve (12) hours per day, Monday through Friday and on Saturdays which occur in weeks containing a holiday which falls on a weekday. These minimum hours of full-scale operations shall be 5 a.m. to 5 p.m. On all other Saturdays the Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, other Participating Agencies and their respective Designated Haulers between the hours of 8 a.m. and 3 p.m.

Contractor shall operate the Station for the receipt and processing of Publicly Hauled Waste, and shall operate the buyback/drop-off center, from 8 a.m. to 5 p.m. every day, including Saturday and Sunday, except for the three (3) holidays. With forty-eight (48) hours' prior notice, Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from the City between 8 a.m. and 5 p.m. on Saturday and/or Sunday.

Contractor may operate the Station for processing of Municipal Solid Waste and Recyclable Materials and for delivery of Municipal Solid Waste to the Disposal Facility and of Recyclable Materials to market beyond the hours set forth above, provided that it complies with the limits on operation of equipment specified in the Conditional Use Permit (Exhibit E), including:

- trucks delivering refuse: 5 a.m. - 5 p.m.
- wood chipping equipment: 8 a.m. - 5 p.m.
- compactors: 7 a.m. - 10 p.m.

3.04 Receipt and Processing of Material from Extended Service Area.
City may at any time, and from time to time, require Contractor to receive and process Municipal Solid Waste and/or Recyclable Materials which originate in the Extended

Service Area. Unless and until City does so, Contractor shall not receive any Municipal Solid Waste or Recyclable Material from outside the Primary Service Area.

City has no obligation to Contractor to allow materials from outside the Primary Service Area to be delivered to the Station.

[If City directs Contractor to receive and process Municipal Solid Waste from the Extended Service Area, either party may request that a waste characterization study of the Municipal Solid Waste from this area be conducted in accordance with the procedure described in _____, and City will arrange for such study to be conducted, with the expenses thereof paid equally by City and Contractor.

Promptly upon completion of the study, the parties will meet to consider: (1) whether the study shows a significant difference in composition of the Municipal Solid Waste from the Extended Service Area, as compared to that from within the Primary Service Area, and (2) if so, whether and to what extent there should be a change in the Minimum Recycling Level. If the parties are unable to agree on an appropriate change in the Minimum Recycling Level, the dispute may be submitted to binding arbitration pursuant to the procedures set out in Exhibit ____.]

3.05 Material Recovery Operations.

A. General. Contractor recognizes that City and the other Participating Agencies are committed to recycling waste materials which have in the past been disposed of in landfills. To that end, the Station has been designed and shall be operated to accomplish materials recovery in four (4) distinct operations which are summarized below in Subsections B, C, D, and E, described in Exhibit B-1, and illustrated in the material flow diagram attached as Exhibit B-2.

B. Processing of Municipal Solid Waste; Minimum Recycling Level

1. Municipal Solid Waste delivered by the Participating Agencies and their Designated Haulers, and Publicly Hauled Waste, shall be sorted to recover materials for Recycling including paper and other fibers, metals, wood, glass and plastic. Contractor shall Recycle not less than seventeen and one-half percent (17.5%) by weight of Municipal Solid Waste (including Publicly Hauled Waste)

delivered to the Station, which percentage is hereinafter referred to as the "Minimum Recycling Level." In addition, Contractor shall use all reasonable efforts to Recycle the maximum economically feasible amount. Contractor's performance in achieving the Minimum Recycling Level will be measured on a fiscal year basis. The Recycling Level achieved by Contractor will be calculated as shown on Exhibit ____.

If Contractor fails to achieve the Minimum Recycling Level in any fiscal year, it shall pay City the sum obtained by multiplying the Disposal Fee per Ton in effect during such fiscal year by the difference, in Tons, between the number of Tons which, if Recycled, would have achieved the Minimum Recycling Level and the number of Tons actually Recycled.

The foregoing amounts shall be paid to City within thirty (30) days after the Recycling Level for the fiscal year has been calculated by City pursuant to Exhibit S. If not so paid, City may deduct the amount due from future payments to Contractor. Payment of the foregoing amounts does not cure the breach of contract represented by failure to achieve the Minimum Recycling Level and City retains its rights under Article 9.

C. Processing of Source-Separated Recyclable Materials. City and the other Participating Agencies operate various recycling programs including "curbside" recycling. Materials collected through these programs currently include glass, metal cans, scrap metals, plastic containers, corrugated cardboard, mixed paper, newsprint, residential used motor oil, and used oil filters. The Participating Agencies may change from time to time the type of materials collected.

Contractor shall process all Source Separated Recyclable Materials collected by City, by other Participating Agencies, by their respective Designated Haulers or by other persons under contract, which are delivered to the Station for marketing in accordance with Section 3.16. Recycling of these materials does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall be responsible for handling, storage and marketing of used motor oil. Contractor shall drain oil containers used by the Participating Agencies' curbside collection programs of all free-flowing residue and shall make

reusable emptied containers available to the operators of the curbside collection programs for reuse.

If City initiates collection of Source-Separated Food Waste, Contractor will process such materials for composting in the manner and for the price described in Exhibit B-3.

D. Processing of Source-Separated Yard Trimmings. Yard Trimmings are collected separately from residential customers by the City and the City of Mountain View. So long as either city continues to collect Yard Trimmings separately, they will continue to be delivered to the Station pursuant to Section 10.17.

Contractor will direct vehicles delivering Source-Separated Yard Trimmings to a specific processing area for removal of contaminants (such as large metal objects, dirt and rock), shredding, magnetic removal of small pieces of ferrous metal and separate bulk storage. Yard Trimmings and untreated wood (but not construction and demolition debris) removed from mixed loads through sorting on the MSW tipping floor will also be processed in the same manner.

Source-Separated Yard Trimmings may not be disposed of at a landfill nor may they be used for alternative daily cover or for any other "beneficial use" at a landfill without City's prior written approval. Source-Separated Yard Trimmings may be (1) composted at a permitted compost facility identified in Contractor's proposal or subsequently approved by City, and (2) with the City's prior written approval, used as fuel in a conventional biomass electrical generating facility.

Source Separated Yard Trimmings are included in the 280,000 Tons processing of which is covered by the Base Annual Payment provided in Section 5.02.B.

Composting, Transformation or Recycling of Source-Separated Yard Trimmings does not count toward Contractor's achievement of the Minimum Recycling Level.

City has no obligation to approve use of Source-Separated Yard Trimmings either as alternative daily cover or as fuel for a biomass facility.

[Residue from compost to Kirby?]

E. Buyback/Dropoff Center. Contractor shall establish and operate a buyback/dropoff center within the Station. The purpose of the Buyback/Dropoff Center is to receive Source-Separated Recyclable Materials that are delivered to the Station by members of the public to process and then to market such materials.

The following materials will be accepted at the dropoff center:

- Newspaper
- Glass bottles, jars and other beverage containers
- Aluminum
- Metals
- Corrugated cardboard and Kraft paper
- High grade office papers
- Mixed paper
- Plastics (HDPE, PET)
- Used motor oil from residential users
- Used automobile oil filters
- Anti-freeze
- Automobile batteries
- Household batteries
- Florescent light bulbs and tubes
- Household items containing mercury (e.g., thermometers, thermostats)
- All containers for which a California Redemption Value ("CRV") is established now or during the Term. (?)
- As directed by City, other materials that are accepted at other facilities similar to the Station located in Alameda, San Mateo and Santa Clara Counties.

Contractor shall establish prices to be paid for materials accepted at the Buyback/Dropoff Center and shall maintain complete and accurate records of purchase transactions. Such prices shall be within ten percent (10%), plus or minus, of the average prices paid for similar materials purchased in retail quantities from individual customers in similar facilities in Alameda, San Mateo and Santa Clara

counties. These average prices will be established by a survey of these facilities conducted once a year by Contractor in July, with the results provided in a written report to City on or before July 31 of each year commencing July 2008.

City shall reimburse Contractor for a portion of the prices paid to users of the Buyback/Dropoff Center, the percentage to be equivalent to the City's percentage share of revenues from Recycled Materials sales, determined in accordance with Section 6.05 and Exhibit _____. The reimbursement shall be effected by a credit against the amount due City from Contractor under Section 6.05.

Contractor shall provide, in the vicinity of the Buybuy/Dropoff Center, a separate bin in which members of the public may deposit, without charge, Sharps. The bin shall be designed with a chute, such that materials deposited in the chute cannot thereafter be removed. Contractor shall arrange for disposal of Sharps at an appropriately permitted facility and shall inform City of the name and location of the facility to be used. City shall reimburse Contractor for the cost of proper disposal of Sharps.

Recycling of materials accepted at the Buybuy/Dropoff Center does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall install and maintain signage at the Station giving members of the public appropriate information about the location and operation of the Buyback/Dropoff Center. The text of the signage shall be approved by City prior to its being installed.

3.06 Permits. City will obtain renewals of all operating permits and approvals from governmental agencies listed on Exhibit D.

If new operating permits and approvals (or amendments to the permits and approvals obtained by City) become necessary during the Term, by virtue of Contractor's operations, it will be the responsibility of Contractor to obtain them. City will assist the Contractor in obtaining them provided that the operations which give rise to the need for them are in compliance with this Agreement. Contractor shall submit a draft of all applications for operating permits (and for subsequent renewals or modifications thereof) to the City for its review and approval prior to filing an

application with the permitting agency. Contractor shall keep the City fully informed at all times on the status of all permit applications, including meetings with agency staff and hearings on permit applications before the agency's governing board.

Contractor shall apply for permits in its own name or in the name of the City, as directed by the City. Contractor shall not agree to permit terms and conditions on any permit which is to be issued in the name of the City without the prior written consent of the City. Copies of all permits issued in Contractor's name and originals of all permits issued in the City's name (and any renewals or amendments) shall be delivered to the City promptly, and in any case within five (5) working-days of their receipt by Contractor.

Contractor shall keep all licenses, permits and approvals governing the Station in force and shall comply with their terms, including any which may require improvements or modifications in operating procedures. Without limiting the generality of the foregoing, Contractor will comply with the terms and conditions contained in the Use Permit issued by the City for the Station, a copy of which is attached as Exhibit E.

Contractor shall be solely responsible for paying any fines or penalties imposed by governmental agencies for Contractor's noncompliance with permit terms or its failure to obtain necessary permits.

3.07 Mitigation Measures. Contractor shall comply with and perform all of the mitigation measures identified in the FEIR which relate to the operation and maintenance by Contractor of the Station and transportation by Contractor of Municipal Solid Waste to the Disposal Facility, which were adopted by the City Council when the FEIR was certified and which are listed on Exhibit F.

3.08 Hazardous Waste. Contractor shall, upon commencement of operations at the Station, implement a Hazardous Waste Exclusion Program ("HWEP"), the minimum requirements for which are set out in Exhibit G, in a diligent, reasonable and non-discriminatory manner. If the California Integrated Waste Management Board or the California EPA require additional measures to be incorporated into the HWEP, Contractor shall comply with such additional measures. Contractor shall temporarily store materials discovered through the HWEP (or otherwise) that cannot

be processed at the Station or accepted at the Disposal Facility in the appropriate storage areas provided at the Station for this purpose. Contractor shall arrange and pay for the safe and lawful disposal of such waste, subject to reimbursement as provided in Section 5.05.

The operator of the Disposal Facility is required to conduct its own independent HWEF which will entail checking of loads delivered from the Station by Contractor. If the operator of the Disposal Facility rejects material delivered to the Disposal Facility under Section 3.06 of the Disposal Contract, Contractor shall remove and dispose of it in a safe and lawful manner, at its sole expense. Contractor shall also be solely responsible for reimbursing the Disposal Facility operator for costs of testing and disposal of waste which the Disposal Facility operator initially accepts but subsequently discovers may not be legally disposed of at the Disposal Facility, to the extent that such reimbursement is required by Section 3.06 of the Disposal Contract. To the extent Contractor must pay the Disposal Facility for the costs of disposing of such hazardous material due to the failure of transporters of Municipal Solid Waste to eliminate such materials prior to their delivery to the Station, Contractor shall be entitled to pursue whatever remedies, if any, it may have against such transporters, but shall not be entitled to reimbursement from City or the Participating Agencies.

Contractor shall remove and arrange for proper disposal of CFCs and compressor oils from appliances delivered to the Station, as well as switches containing mercury.

3.09 Equipment. City will provide the equipment listed on Exhibit H-1. Contractor shall provide all other equipment, sufficient in number and capacity to perform safely and efficiently the work required by this Agreement including but not limited to the equipment listed on Exhibit H-2. All equipment furnished by Contractor shall be new and unused as of January 2008, and suitable in design and construction for arduous, heavy-duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

The number of Transfer Vehicles and other equipment shown on Exhibit H-2 is based on throughput of Municipal Solid Waste at the level anticipated at the commencement of the Term. The parties recognize that volume may increase over

time and that additional Transfer Vehicles and/or other equipment would be needed if and when it does. Contractor will acquire and operate such additional Transfer Vehicles and/or other equipment as needed to receive, process and transfer up to 1500 Tons per day, while continuing to meet performance standards required by this Agreement, and there shall be no increase in the Contractor's compensation provided in Article 5 as a result. All Transfer Vehicles must be capable of being loaded from either top or rear.

The City shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Agreement, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall, prior to February 1, 2008, deliver to the City properly signed UCC-1 Financing Statements and all other documents necessary or appropriate for the City to secure its purchase options and shall record, or allow the City to record, such Statements and other documentation. As new or replacement equipment is purchased, similar documentation covering it shall be provided by Contractor.

Upon the City's exercise of its option to purchase, Contractor will sign and deliver bills of sale or other documents reasonably requested by City to evidence the transfer of title to all equipment purchased.

If Contractor wishes to lease (rather than purchase) the equipment which it is to furnish, it shall request City's permission to do so and provide to City, for its approval, complete and accurate copies of all equipment leases which it proposes to enter into. The leases must provide that the lessor will, if requested, consent to their assignment to City without charge upon the expiration or earlier termination of this Agreement and must provide adequate mechanisms for the City to acquire title to equipment if desired.

3.10 Personnel. Contractor shall furnish qualified competent drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and maintenance of the Station and the transfer of Municipal

Solid Waste to the Disposal Facility and Recyclable Materials to market) in a safe and efficient manner. The minimum complement of personnel staffing the Station shall be as shown on Exhibit I-1. Exhibit I-1 shows the personnel complement at an average throughput of Municipal Solid Waste anticipated at the commencement of the Term. The parties recognize that throughput rates may increase over time and that this increased volume could require additional personnel. The Contractor will add personnel as needed to operate the Station and achieve the Minimum Recycling Level, without any increase in the Contractor's compensation provided for in Article 5, provided that the annual volume of MSW and yard trimmings is not in excess of 280,000 tons.

Contractor shall pay its drivers, sorters, mechanics and other employees working directly under this Agreement, and based at the Transfer Station, wages and benefits no less than the general prevailing rate of wages applicable to the work to be done, as determined by the Director of the California Department of Industrial Relations in a letter dated February 28, 2006, attached as Exhibit I-2. Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the "total hourly rate" determined to be the prevailing wage, as shown on Exhibit I-2. The method by which benefits such as sick leave, vacation/holiday, and health insurance are monetized is shown on Exhibit I-3.

If the California Department of Industrial Relations issues a subsequent determination that the total hourly rate for any job classification is higher than the total hourly rate then in effect as calculated in subsection B above, then Contractor shall, no later than the first July 1 after the date of issuance of the Department of Industrial Relations determination letter, raise the wages and/or benefits of the employees in that job classification by 3% plus the same percentage as the Basic Annual Payment is increased pursuant to Section 5.02.B. or the amount required to bring the hourly rate to the new prevailing wage, whichever is less. If the hourly rate remains below the rate in the determination, on each subsequent July 1 Contractor will provide another increase in wages and/or benefits, until the hourly rate is at least at the level of the prevailing wage in the determination or until the end of the Term, whichever comes first.

If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor:

- (a) Provides all such workers compensation equal to that which this Section would require Contractor to pay if the workers had been hired as its own employees;
- (b) Complies with the nondiscrimination requirements imposed on Contractor by Section 10.14;
- (c) Maintains workers compensation and employer's liability insurance covering such workers in the amount required by Section 7.02.A.1 and with policies meeting the other requirements of Section 7.02.A.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work which Contractor is required to perform and the standards it is required to meet, under this Agreement.

If workers provided by a particular independent contractor prove persistently unsatisfactory, City may require that Contractor either secure workers through a different independent contractor or hire qualified and competent employees directly. Contractor shall defend and indemnify City from and against any claim or suit filed by any independent contractor furnishing workers to Contractor.

3.11 Other Operating Procedures and Standards. In addition to the foregoing, Contractor shall conduct its operations in accordance with the requirements of the California Integrated Waste Management Board currently in effect and as they may be changed from time to time, and with the procedures and standards contained in Exhibit J.

3.12 Turnaround Time of Waste Collection Vehicles. Contractor shall operate the Station so that:

A. All vehicles of Participating Agencies and their Designated Haulers entering the Station are processed through the scale house weighing operation in no more than ninety (90) seconds per vehicle, measured from the vehicle's entry onto the scale;

B. All vehicles of Participating Agencies and their Designated Haulers are able to unload and depart from the Station in no more than fifteen (15) minutes from their leaving the scale house;

C. All vehicles carrying Publicly Hauled Waste do not wait an unreasonable amount of time at the scale house or for an assigned place to dump.

3.13 Weighing. Contractor shall operate and maintain the scale system at the Station. Weighing operations shall be conducted in accordance with standards and procedures set out on Exhibit J. City will provide four (4) scales at the Station with digital instrumentation. Contractor shall furnish all hardware (including computers, cabling and terminals) and software (including memory) and all other items necessary to generate, at a minimum, all the reports contained in Exhibits ____ through O-11. The software shall have the capabilities described in Exhibit _____. The Contractor shall be solely responsible for operation of the computers and software.

Contractor shall provide City with licenses and all other documentation necessary or useful for City to operate the computers and software upon expiration or earlier termination of the Agreement.

City may decide to install, at its expense, radiation detection equipment at the Gate House. If so, Contractor will accommodate the work necessary to install the equipment, will arrange for its employees to be trained in its use (training to be provided by City), and will operate the equipment and respond to alerts without additional cost to City.

3.14 Collection of Public Use Fees. Contractor shall collect Public Use Fees established by the City from all Persons who use the Station other than the Participating Agencies and their Designated Haulers. Contractor shall keep complete and accurate records of all Public Use Fees collected, shall be responsible for the safekeeping of monies and negotiable instruments collected, and shall remit to the

City (and the other Participating Agencies) all of such Public Use Fees collected, except the Gate Fee, provided in Section 5.04. The City shall have sole and exclusive authority to establish Public Use Fees and to modify them from time to time, provided that they will always be sufficient to generate at least the Gate Fee.

3.15 Cooperation Regarding Clean Up Campaign and Special Events.

Contractor shall cooperate with all the Participating Agencies in providing free dumping weekends during Cleanup Campaigns and in use of "free dumping" coupons by residents of the Participating Agencies. Cleanup campaigns shall occur no more than six (6) weekends each year; coupons for free dumping may be valid at any time, however. No more than one (1) Cleanup Campaign will be scheduled on any given weekend. In addition, Contractor shall cooperate with City in other periodic events, including document shredding and neighborhood cleanups. [DESCRIBE]

3.16 Marketing of Recyclable Materials.

A. Marketing Efforts. Contractor shall use its best efforts in marketing and promoting the sale of all Recyclable Materials. Contractor shall employ its best marketing strategy in effecting disposition of Recyclable Materials, and shall use its best efforts to obtain the best possible prices for Recyclable Materials consistent with prevailing conditions in the market, whether foreign or domestic. Contractor will exert at least the same effort in marketing the Recyclable Materials from the Station as it does in marketing materials which it markets for its own account as Principal or as an agent/broker for any third party.

B. Marketing Plan. Contractor shall submit to City on or before January 1, 2008, and annually thereafter on or before January 1 of each following year, a plan for marketing of Recyclable Materials for the forthcoming year. The Marketing Plan shall include the following:

1. Quantities: estimated quantities of Recyclable Materials in each of the following categories which Contractor expects to process for marketing during the year:

- Newsprint
- Glass bottles and jars

hundred percent (100%) of the per ton cost incurred in their disposition, which are in excess of the disposition cost limit set forth above.

D. Title and Risk of Loss. Title to, and risk of loss of, Recyclable Materials shall be with Contractor upon delivery to the Station. Contractor shall keep the Recyclable Materials free from liens and other claims of Contractor's creditors.

E. Relationship of Parties. The parties to this Agreement intend and hereby agree that their relationship shall be that of independent contractors with respect to the marketing of Recyclable Materials. Nothing contained herein shall be construed to create any employment, partnership, joint venture, co-ownership or agency relationship between the parties, and Contractor shall not by any action allow any presumption to arise that a relationship of partnership or agency exists between the parties.

3.17 City's Right to Cure Defaults. In the event that Contractor fails to perform any of its obligations under this Article 3, and fails to commence and diligently prosecute such work within three (3) days after notice from City, City may (but shall not be obligated to) enter the Station Site with necessary workers and equipment and perform the required work, or engage a third party contractor to do so. In such event, Contractor shall immediately upon demand reimburse City for all costs thereof, including any payments to a third party contractor, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement City may deduct the amounts due from subsequent payments to Contractor under Article 5.

3.18 City Use of Offices/Visitor Center.

A. Offices. City shall have exclusive use of approximately six hundred seventy-five (675) square feet of the office space, as shown on Exhibit __. In addition ten (10) parking spaces will be reserved for the exclusive use of City staff and invitees. Contractor shall provide, at no charge to City, utilities to this portion of the Office/Visitor Center building, including water, sewer, electrical power, heat and light, as well as janitorial and building maintenance services. City will provide, at its

expense, telephones and other communications equipment, furniture, computers, office supplies and moveable partitions.

B. Other Areas. City shall have the right to make reasonable use of the common areas in the remainder of the building (e.g., the lobby, conference room, orientation room, lunch room, lockers/showers, and restrooms). City's use of these areas shall not interfere with Contractor's use, and the parties shall cooperate with each other in the scheduling of the use of the conference room and orientation room.

3.19 Source-Separated Recyclables-Composition Survey. Contractor shall conduct, or assist City in the conduct of, a survey of the composition of Source-Separated Recyclable Materials delivered to the Station by the Designated Hauler of City and of Mountain View. The purpose of the survey is to determine the relative amounts of various types and grades of Source-Separated Recyclable Materials delivered from each jurisdiction for purposes of the MOU. Surveys will be conducted no more frequently than once every six (6) months and will require up to _____ () worker hours of sorting and tabulation. The procedure for the survey and the content of the report to be furnished within _____ () weeks after completion of the survey are described in Exhibit ____.

3.20 Cost Allocation Reports. No later than thirty (30) days after the end of each fiscal year, i.e., by July 30 of each year, Contractor shall deliver to City a report showing the distribution of all payments received from the City among the following operations:

- transfer
- materials recovery
- yard trimmings processing
- curbside recyclables
- public buyback/drop off

Contractor shall set forth the cost allocation method it used to calculate the distribution. In addition, if requested by City, it shall submit up to two (2) additional revenue distributions using alternative allocation assumptions provided by the City.

**ARTICLE 4. TRANSPORTATION OF MUNICIPAL SOLID WASTE
FOR DISPOSAL; RECYCLABLE MATERIALS TO MARKET**

4.01 Transportation. Contractor shall transport and deliver to the Disposal Facility all Municipal Solid Waste that is not recycled. Contractor shall transport and deliver (or arrange for the transportation and delivery of) all Recyclable Materials, including Source-Separated Recyclable Materials and Recyclable Materials recovered from MSW, to a purchaser, a permitted recycling facility, or a person who will use the materials in a process or product and will not dispose of them. Contractor shall arrange for the Transportation and delivery of all Source-Separated Yard Trimmings to a permitted off-site composting facility or biomass-fuel electrical generating station. Contractor shall transport and deliver (or arrange for the transportation and delivery of) Hazardous Waste, Designated Waste and other materials which are encountered at the Station and which cannot be accepted at the Disposal Facility to an appropriately permitted disposal facility. Routes within City over which vehicles travel to effect this transport and delivery shall be selected to minimize inconvenience and disturbance to the public and shall be subject to the approval of City.

Contractor shall use due care to prevent Municipal Solid Waste or Recyclable Materials from being spilled or scattered during transport. All vehicles hauling materials from the Station shall be enclosed or have other appropriate covering as approved by City. If any Municipal Solid Waste or Recyclable Materials are spilled within the City, Contractor shall immediately clean up all spilled materials, whether on private or public property.

No Recyclable Materials which have been delivered to the Station already separated and no materials which have been processed at the Station for Recycling may be disposed of (1) on land, or (2) with the sole exception of wood, through Transformation, without the prior written consent of City.

No materials of any kind may be disposed of on land at any location other than the Disposal Facility. No materials of any kind may be disposed of in water or in the atmosphere. Notwithstanding the foregoing, Contractor may, and shall, dispose (or arrange for the disposal) of Hazardous Waste which it identifies among the materials

delivered to the Station at permitted hazardous waste disposal facilities, subject to City reimbursement under Section 5.02.D.

Transfer Vehicles shall not depart the Station to deliver Municipal Solid Waste to Kirby Canyon between the hours of 4:30 p.m. and 5:30 p.m., Monday through Friday, except California State holidays. Transfer Vehicles shall not depart Kirby Canyon to return to the Station between the hours of 7:15 a.m. and 8:30 a.m., Monday through Friday, except California State holidays.

4.02 Parking and Maintenance of Transfer Vehicles. Contractor may park empty Transfer Vehicles in the fenced and paved operational area of the Station Site, which does not include the office parking lot. Transfer Vehicles may not be fueled, maintained or repaired in this area. Contractor must make arrangements, at its sole costs and expense, for an off site location at which fueling, maintenance and repair of Transfer Vehicles will be carried out. Transfer Vehicles containing Municipal Solid Waste must be parked on the tipping floor, so that liquids from the Municipal Solid Waste drain only to the tipping floor.

ARTICLE 5. COMPENSATION TO CONTRACTOR

5.01 General. The payments provided for in Sections 5.02 through 5.05 and the share of revenues provided in Section 5.06 are the full, entire and complete compensation due to Contractor for furnishing all labor, equipment, materials and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement, including but not limited to the operation of the Station in accordance with Article 3, and the transportation of materials in accordance with Article 4. The compensation provided for in this Article includes all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate to perform the services in accordance with this Agreement. Notwithstanding the foregoing, if a possessory interest tax is assessed against Contractor pursuant to California Revenue and Taxation Code Section 107, Contractor shall pay such tax but City shall reimburse Contractor for the amount of tax paid upon receipt of evidence of the tax assessment and payment. Contractor shall cooperate with City, if requested, in City's effort to seek a reduction in or removal of such tax, including filing a protest of the tax. Expenses incurred by Contractor in so doing will also be reimbursed by City.

5.02 Basic Annual Payment.

A. Contractor will be paid a Basic Annual Payment for receipt, processing and transfer of up to two hundred eighty thousand (280,000) Tons per year of MSW and Yard Trimmings delivered to the Station by the Participating Agencies, their Designated Haulers, and the Designated Haulers of communities in the Extended Service Area. The Basic Annual Payment in effect as of the Effective Date is _____ Dollars (\$_____).

B. The Basic Annual Payment set forth in Section 5.02.A shall be adjusted as of July 1, 2007 and as of July 1 annually thereafter to reflect changes in the San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (All Urban Consumers: 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics ("the Index"). The Index level as of _____, 2006 (i.e., _____) shall be the Base Index and shall be

compared with the Index as of _____ in subsequent years. For example, the Basic Annual Payment shall be adjusted on July 1, 2007 by multiplying _____ Dollars (\$_____) by one (1) plus the percentage change from the Base Index to the Index level as of _____ 2007. The parties recognize that the amount of the monthly installment payment will change each August to reflect the change to the Basic Annual Payment taking effect each July.

C. The Basic Annual Payment will be paid as provided in Section 6.01.

5.03 Tipping Fee for Excess Tonnage.

A. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area during the period January 1, 2008 through June 30, 2008 exceeds One Hundred Forty Thousand (140,000) Tons, the Contractor shall be paid a Tipping Fee for each Ton in excess of 140,000 Tons.

B. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area exceeds Two Hundred Eighty Thousand (280,000) Tons in any fiscal year commencing July 1, 2008, Contractor shall be paid a Tipping Fee for each Ton in excess of 280,000 Tons as provided in Section 5.03.B.

C. The Tipping Fees earned for Excess Tonnage in effect as of the Effective Date shall be:

For MSW: \$_____ per Ton

For Yard Trimmings: \$_____ per Ton.

D. The Tipping Fees set forth in Section 5.03.B shall be adjusted as of July 1, 2007 and as of each July 1 thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

E. Tipping Fees earned, if any, will be paid as provided in Section 6.02.

5.04 Gate Fees for Publicly Hauled Waste.

A. Contractor will be paid a Gate Fee for receipt, processing and transfer of Publicly Hauled Waste delivered to the Station whether from within the Primary Service Area or, if allowed by City, from within the Extended Service Area. This Gate Fee will be, as of the Effective Date, Five Dollars and Fifty Cents (\$5.50) per Cubic Yard.

B. The Gate Fee for Publicly Hauled Waste set forth in Section 5.04.A shall be adjusted as of January 1, 2007 and as of July 1 annually thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

C. Gate Fees for Publicly Hauled Waste will be paid as provide in Section 6.03.

5.05 Reimbursement of Certain Costs.

A. The Basic Annual Payment provided in Section 5.02 is intended to cover all costs of operating the Station other than those incurred by Contractor

1. to arrange for transport and legal disposal of Hazardous Wastes and Sharps identified through the Hazardous Waste Exclusion Program or during subsequent processing at the Station, radioactive wastes detected at the scales, and Sharps delivered to the Drop Off Facility; and

2. to purchase spare parts for stationery equipment listed on Exhibit H-1.

Contractor will not receive reimbursement for costs of disposal of compressor oils, switches containing mercury, or CFCs removed from appliances delivered to the Station or for Hazardous Wastes generated by the Contractor's own operations, all of which are included in the Basic Annual Payment.

B. Reimbursement of actual and reasonable costs incurred will be made as provided in Section 6.04.

5.06 Contractor's Share of Recycling Revenues. As an incentive to Contractor to maximize both the quantity and quality of materials recovered and successfully marketed for recycling, Contractor will be entitled to retain a percentage of gross revenues from the sale of

- (i) Materials recovered from MSW;
- (ii) Source Separated Recyclable Materials delivered by the Participating Agencies' Designated Haulers;
- (iii) Source Separated Yard Trimmings delivered by the Participating Agencies' Designated Haulers;
- (iv) Materials delivered to the Drop-Off Center.

The percentage of gross revenue to be retained by Contractor is dependent on the level of recovery achieved, as set forth on Exhibit ____.

[Price Guarantee?]

The method by which Contractor will share revenues as provided above is specified in Section 6.05.

ARTICLE 6. PAYMENT AND REVENUE SHARING PROCEDURES

6.01 Basic Annual Payment. The Basic Annual Payment provided for in Section 5.02 shall be paid in arrears in 12 equal monthly installments, with the first payment due in February 2008. City will pay each installment by the fifteenth (15th) day of the month immediately following the month in which that installment of the Basic Annual Payment was earned.

6.02 Tipping Fee for Excess Tonnage. If Contractor earns a Tipping Fee provided for in Section 5.03 for processing more than 280,000 Tons of MSW and Yard Trimmings during a fiscal year, City will pay the amount due by the fifteenth (15th) day of the month immediately following the month in which the Tipping Fee was earned.

6.03 Publicly Hauled Waste. Contractor will pay to City (by deposit to a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month, the amount of all public use fees collected, billed or billable during the immediately preceding month from persons delivering Publicly Hauled Waste, less the amount of the Gate Fee for processing Publicly Hauled Waste then in effect under Section 5.04. If Contractor extends credit to Persons delivering Publicly Hauled Waste, it does so at its risk and is solely responsible for inability to collect sums due.

6.04 Cost Reimbursements. If Contractor incurs costs which are reimbursable under Section 5.05, it shall submit an invoice by the fifteenth (15th) day of the following month with information sufficient to substantiate the amount and purpose of each expense. City will pay the cost reimbursements due by the fifteenth (15th) day of the month immediately following its receipt of a timely and complete invoice.

6.05 Revenues Received from Sale of Recyclable Materials.

A. Contractor shall remit to City the applicable percentage of the gross sales price of all materials delivered to the Station which are not disposed of at the Disposal Facility, including, but not limited to (1) materials recovered by Contractor from Municipal Solid Waste, (2) Source-Separated Recyclable Materials delivered by Designated Haulers, and (3) Recyclable Materials delivered to the dropoff center.

B. Contractor shall pay to City (by deposit into a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month the percentage of the gross sales price earned during the preceding month from the sale of material described in Section 6.05.A to which City is entitled under Section 5.06 and Exhibit _____. The amount to be paid to City will be all revenues earned that Contractor is not entitled to retain under Section 5.06. ***[How to determine percentage to be used at outset?]***

C. On or before the fifteenth (15th) day of each month, Contractor shall submit to City a report showing at least the following information:

1. the amount (in Tons) of Source-Separated Recyclable Materials delivered to the Station during each day of the preceding month by each of the Participating Agencies and/or their Designated Haulers;

2. the amount (in Tons or cubic yards, whichever is applicable) of Recyclable Materials delivered to the Buyback/Dropoff Center during each day of the preceding month;

3. the amount (in Tons) of Recyclable Materials recovered by Contractor from Municipal Solid Waste delivered to the Tipping Floor;

4. the amount (in Tons) of Recyclable Materials sold by type and grade, and the total sales price;

5. a daily accounting showing the following information for each sales transaction:

- date of sale;
- type of material sold and grade, if applicable;
- quantity of material sold;
- unit price;
- total revenue due from sale;
- name and address of purchaser; and
- a copy of the sales invoice, sales contract or other document evidencing transfer of title.

Contractor shall utilize the appropriate reporting forms in Exhibit ____.

D. If Contractor and purchasers adjust the sales price for materials after the initial sales transaction to account for agreed-upon differences in quantities (due to moisture loss, for example) or quality (due to grade determinations), Contractor shall notify City within _____ (____) days after the close of the month in which the sale was initially made and an adjustment shall be made (up or down) in the amount of revenue due to City to reflect the ultimate sales price. This adjustment procedure does not allow Contractor to reduce amounts owed City due to purchaser default; credit sales are at the sole risk of Contractor.

E. The parties shall, during July of each year, perform an annual reconciliation of the allocation of recycling revenues by calculating the annual recycling level for the preceding fiscal year per Exhibit ____, determining the corresponding revenue allocations per Exhibit ____, and applying those percentages to the total amount of revenue earned during that fiscal year. (In July 2008, the reconciliation will cover the previous six months.) The resulting dollar amounts will be compared with the sum of the monthly payments to the City and any adjustment (which is not expected to be large) made by means of a separate payment from Contractor to the City or from the City to Contractor made within thirty (30) days after the amount of the adjustment is determined.

F. City may request additional information regarding a report within thirty (30) days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report and payment, or within thirty (30) days after receipt of the additional information if such information is requested, of any dispute as to the accuracy of the report and the amount of the payment.

G. City will consider adopting reporting systems and procedures which will protect the confidentiality of parties to brokered transactions, if Contractor advises that doing so would enhance the marketability or market price of Recyclable

Materials. City has no obligation to adopt or implement any such system and its decision on this matter will be in its sole discretion.

6.06 Host Fee; Payment Procedure. In order to assist City in separately collecting the Host Fee from the other Participating Agencies, on or before the fifteenth (15th) day of each month, Contractor shall submit to City a report showing: (1) the amount (in Tons or yards, whichever is applicable) of Municipal Solid Waste delivered to the Station on each day of the preceding month; (2) the total amount of Municipal Solid Waste (in Tons or yards) delivered to the Station during the preceding month; and (3) a breakdown showing how many Tons or yards of Municipal Solid Waste were received from (i) each of the Participating Agencies, (ii) from cities that are not Participating Agencies, if any, and (iii) from all other sources during the preceding month.

City may request additional information regarding a report within thirty (30) days from its receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report, or within thirty (30) days after receipt of the additional information, if such information was requested, of any dispute as to the accuracy of the report.

ARTICLE 7. INDEMNITY, INSURANCE, BOND

7.01 Indemnification. Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

7.02 Insurance.

A. Types and Amounts of Coverage. Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability.

Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain Employer's Liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per accident or disease. Provided, however, that Contractor shall not be obligated to carry workers' compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) provides a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and

(iii) provides a certified copy of the permit renewing authorization for such self-insurance at least ten (10) days before expiration of the old permit.

2. Comprehensive General Liability (and Automobile Liability).

Contractor shall maintain Comprehensive General Liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this Subsection shall include:

- (a) Premises Operations, including use of owned and non-owned equipment;
- (b) Independent Contractor's Protective;
- (c) Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another person;
- (d) Personal Injury Liability with Employment Exclusion deleted;
- (e) Broad Form Blanket Contractual, including Contractor's Obligation under Section 7.01, with no exclusions for bodily injury, personal injury or property damage;
- (f) Owned, Non-Owned, and Hired Motor Vehicles;
- (g) Broad Form Property Damage, including Completed Operations.

The Comprehensive General Liability insurance required by Section 7.02.A.2 shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG 0001). If coverage is not obtainable, Contractor must arrange for "tail coverage" on a claims made policy to protect City from claims filed within four years after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or

termination. Any excess or umbrella policies shall be on a "following form" basis. The policy limit and the self-insured retention shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

3. Hazardous Materials Storage and Transport. Contractor shall maintain insurance coverage of not less than Five Million Dollars (\$5,000,000) per location for personal injury, bodily injury and property damage arising out of the sudden and accidental release of any hazardous materials or wastes during storage at the Station and transport of such materials by vehicles owned, operated or controlled by Contractor in the performance of the services required under this Agreement. This insurance shall also cover costs associated with remediation of the released hazardous materials. The policy limit for such coverage shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

4. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) physical damage insurance covering (a) the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than Fifty Thousand Dollars (\$50,000), and (b) Recyclable Materials at the Station Site or in transit to a purchaser, with no deductible or self-insured retention. Regardless of the foregoing, for the tractors and trailers used in providing services under this Agreement Contractor shall be allowed to self-insure for physical damage provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses. Contractor must also carry comprehensive physical damage insurance with a deductible of not more than One Hundred Thousand Dollars (\$100,000), applicable to a casualty occurring while such vehicles are parked.

5. Pollution Liability. Contractor shall maintain Contractor's pollution liability insurance with limits in an amount of not less than One Million

Dollars (\$1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and remediation as a result of pollution conditions arising out of its operations under this Agreement.

The insurance policies required by this Section 7.02 shall be issued by an insurance company or companies admitted to do business in the State of California, and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better. However, if Contractor demonstrates that such insurance is unavailable on commercially reasonable terms from insurers with such ratings, it may request approval of insurers with a rating of not less than A+ VI in the then most recent edition of Best's Insurance Reports and City shall not unreasonably refuse such a request. Under no circumstances shall the insurer be rated less than "A+."

B. Required Endorsements.

1. The Worker's Compensation and Employers' Liability policy shall contain endorsements in substantially the following form:

"Thirty (30) days prior written notice shall be given to the City of Sunnyvale in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk and Insurance Manager

CITY OF SUNNYVALE
P.O. Box 3707
456 West Olive Avenue
Sunnyvale, CA 94086

"Insurer waives all right of subrogation against City and its officers and employees arising from work performed for City."

2. The Comprehensive General Liability, Hazardous Materials and Pollution Liability policies shall contain endorsements in substantially the following form:

(a) "Thirty (30) days' prior written notice shall be given to the City of Sunnyvale in the event of cancellation or non-renewal of this policy, reduction in coverage,

or reduction in aggregate limits due to payment of claims. Such notice shall be sent to:

Risk and Insurance Manager
CITY OF SUNNYVALE
P.O. Box 3707
456 West Olive Avenue
Sunnyvale, CA 94086

- (b) "The City of Sunnyvale, its officers, employees, and agents, the City of Palo Alto, and the City of Mountain View are additional insureds on this policy."
- (c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Sunnyvale, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (d) "Inclusion of the City of Sunnyvale, Palo Alto and Mountain View as an insured shall not affect the Participating Agencies' rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Participating Agencies in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. The physical damage policy shall contain the following

endorsements:

- (a) Notice of cancellation, reduction in coverage or non-renewal, as provided in Subsection B.2(a).
- (b) Cross liability endorsement, as provided in Subsection B.2(d).
- (c) Waiver of subrogation against City.
- (d) Proceeds to be paid to City, to the extent of loss of or damage to Recyclable Materials.

C. Delivery of Proof of Coverage. No later than thirty (30) days before the commencement of operations (i.e., on or before November 30, 2007), Contractor shall furnish City certificates of each policy of insurance on a Standard ACORD form substantiating that each of the coverages required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term.

D. Other Insurance Requirements

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 7.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 7.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 7.01. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

3. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

7.03 Faithful Performance Bond. Not later than ten (10) days before the Effective Date (i.e., on or before _____, 2007), Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be [Two Million Dollars (\$2,000,000).] The form of the bond shall be as set out in Exhibit _____. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twenty-four (24) months, or until _____, 2009, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than ninety (90) days before the expiration of the initial bond, the Contractor shall furnish either a replacement bond or a continuation certificate substantially in the form attached as Exhibit ____-1, executed by the surety.

The principal amount of the bond shall be increased in 2011 by the same percentage that the Basic Annual Payment provided in Section 5.02 has been cumulatively increased, rounded to the nearest Twenty Five Thousand Dollars (\$25,000).

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term.

7.04 Alternative Security. City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 7.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

7.05 Hazardous Waste Indemnification. Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the City against

all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Wastes at any place where Contractor stores or disposes of Hazardous Wastes pursuant to this Agreement except to the extent that Contractor can demonstrate that such claim arises solely from Hazardous Wastes collected and deposited by City employees acting within the ordinary course and scope of their employment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City from liability.

7.06 Integrated Waste Management Act Indemnification. Contractor agrees to indemnify and hold harmless the City against all fines and/or penalties imposed by the California Integrated Waste Management Board (CIWMB) or the Local Enforcement Agency (LEA): a) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by the CIWMB or the LEA; b) caused or contributed to by the Contractor's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

8.01 Corporate Status. Contractor is a _____ duly organized, validly existing and in good standing under the laws of the State of _____, and is qualified to do business in the State of California. It has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

8.02 Corporate Authorization. Contractor has the authority to enter into and perform its obligations under this Agreement. [The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law, its Articles of Incorporation, its Bylaws or otherwise to authorize the execution of this Agreement.] The person signing this Agreement on behalf of Contractor has authority to do so.

8.03 Statements and Information in Proposal. The Proposal submitted to City by Contractor and information submitted to City supplementary thereto, on which City has relied in entering into this Agreement does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

8.04 No Conflict with Applicable Law or Other Documents. Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of any existing applicable law; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

8.05 No Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way,

would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

8.06 Financial Condition. Contractor has made available to City information on its financial condition [and that of _____]. Contractor recognizes that City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

8.07 Expertise. Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.

ARTICLE 9. DEFAULT AND REMEDIES

9.01 Events of Default. Each of the following shall constitute an event of default ("Contractor Default") hereunder:

A. Contractor fails to perform any of its obligations under this Agreement, or any present or future supplement to this Agreement and fails to cure such breach (1) within thirty (30) days of receiving notice from City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Contractor shall not be in default so long as Contractor promptly commences the cure and diligently proceeds to completion of the cure; or (2) immediately, if the breach is such that the health, welfare or safety of the public is endangered thereby.

B. There is a seizure or attachment of, or levy on, the operating equipment of Contractor used at the Station, including without limitation, its vehicles, maintenance or office facilities, of such proportion as to substantially impair Contractor's ability to perform under this Agreement, and which is not released, bonded or otherwise lifted within two (2) business days.

C. There is any termination or suspension from any cause, including without limit, labor unrest including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action of (a) the Contractor's ability to accept Solid Waste at the Station for more than two (2) days, or (b) its ability to operate Recycling Operations for more than fourteen (14) days.

D. Contractor files a voluntary case for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

E. A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, and such proceeding shall remain undismissed or unstayed for a period of ninety (90) days or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

F. Contractor fails to furnish a replacement bond or a continuation certificate of the existing bond not less than sixty (60) days before expiration of the performance bond, as required by Section 7.03 of the Agreement or fails to maintain all required insurance coverages in force. The default shall occur immediately upon such failure without any necessity for notice from City of the breach and there shall be no opportunity to cure such breach. City shall have the right to give notice of termination under Section 9.02 immediately upon such default.

G. Contractor fails to provide reasonable assurance of performance required under Section 10.19.

H. A representation or warranty contained in Article 8 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

9.02 Right to Suspend or Terminate Upon Default.

A. Upon any Contractor Default, City shall have the right to suspend or terminate this Agreement, in whole or in part. Such suspension or termination shall be effective thirty (30) days after City has given notice of suspension or termination to Contractor, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Notice may be given orally in person or by telephone to the representative of Contractor designated in or under Section 10.12 (or, if he/she is unavailable, to a responsible employee of Contractor) and shall be effective immediately. Written

confirmation of such oral notice of suspension or termination shall be sent by personal delivery, facsimile, or other expedited means of delivery to Contractor within twenty-four (24) hours of the oral notification. Contractor shall continue to perform the portion of the Agreement not suspended, in full conformity with its terms.

B. City will also have the right to suspend or terminate this Agreement, upon the same notice provisions, if Contractor's ability to perform is prevented or materially interfered with by a change in permit or law with which, under Sections 3.06 and 10.02 Contractor must comply, or by a cause which excuses nonperformance under Section 10.21, despite the fact that nonperformance in any of such cases is neither a breach nor default by Contractor.

9.03 Specific Performance. By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief.

9.04 Right to Perform. If this Agreement is suspended and/or terminated due to a Contractor Default, City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work, including, but not limited to, transportation of Municipal Solid Waste to the Disposal Facility. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City.

9.05 City's Remedies Cumulative. City's right to cure breaches under Section 3.17, to suspend or terminate the Agreement under Section 9.02, to obtain specific performance under Section 9.03, and to perform under Section 9.04 are not exclusive, and City's exercise of one (1) such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have, and including a legal action for damages, including incidental, consequential and/or special damages.

9.06 Liquidated Damages. The parties acknowledge (1) that consistent, efficient operation of the Station is of utmost importance, (2) that delays in operations which increase the costs of Participating Agencies' Designated Haulers will affect the payments that Participating Agencies must make to the Designated Hauler, and (3) that City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, Participating Agencies and their residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that Participating Agencies will suffer. Therefore, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to Participating Agencies that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: _____

City Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth below and further agrees that these amounts may be deducted by City from payments to Contractor by City:

- For each vehicle of Participating Agencies, and their Designated Haulers which is unable to depart from the Station within the fifteen (15) minute maximum turnaround time due to queuing within the Station. (Section 3.12)..... \$200
- For each vehicle of Participating Agencies and their Designated Haulers that is not processed through the scale house weighing operation in less than ninety (90) seconds. (Section 3.12)..... \$200

- For each failure to clean the Transfer Station floor,
as required in Exhibit ___, Section ____ \$1,000
- For each notice of violation received from the Local
Enforcement Agency or the California Integrated
Waste Management Board. \$1,000

Each of the above amounts will apply, for purposes of this Agreement, only to vehicles hauling Municipal Solid Waste from within a Participating Agency, including all vehicles of City, the other Participating Agencies, its or their Designated Haulers.

Each of the above amounts will be adjusted as of July 1, 2009 and annually thereafter to reflect changes in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics. The Index level as of July 1, 2005 (i.e., 171.8) shall be the Base Index.

Neither the time limits nor the liquidated damages set forth in this Section shall apply to vehicles selected for load check procedures pursuant to the HWEP or which are otherwise delayed because of the Contractor's investigations of their contents for hazardous waste nor to vehicles delayed by driver negligence, mechanical breakdown or other such cause which is beyond the control of, and not the fault of, the Contractor.

City's right to recover liquidated damages for Contractor's failure to meet the service performance standards shall not preclude City from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Agreement for such persistent failures.

9.07 City Default. City shall be in default under this Agreement ("City Default") in the event City commits a material breach of the Agreement and fails to cure such breach within thirty (30) days after receiving notice from the Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure. City shall not be in default if a dispute arising under any Section for which

arbitration is specified as the method of dispute resolution has been referred to arbitration until thirty (30) days after the arbitrator's final decision has been rendered.

In the event of a City Default, Contractor shall have all remedies available under California law for breach of contract; provided, however, that Contractor will continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that Contractor has the right to terminate this Agreement as a result of a City Default.

9.08 City's Right to Cure. In the event that Contractor fails to perform any of its obligations under [Articles 3, 4, 5 or 6] and fails to perform such work within two (2) business days after notice from City, City may (but shall not be obligated to) enter the Station Site with necessary workers and equipment and perform the required work, or engage a third party contractor to do so. In such event, Contractor shall immediately upon demand reimburse City for all costs thereof, including any payments to a third party contractor, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement City may deduct the amounts due from subsequent payments to Contractor under Article 5.

9.09 Use of Property Upon Default. In the event of Contractor's Default, the City shall have the right to use any of Contractor's equipment, facilities and other property reasonably necessary for the provision of services hereunder. The City shall have the right to continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider. If the City continues use thereof after the period of time for which Contractor has already been paid, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City as a result of Contractor's Default. Contractor agrees that it will fully cooperate with the City to effect the City's use of such property. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the

services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 7 which are meant to extend to circumstances arising under this Section.

9.10 **Damages.** Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's Default. This section is intended to be declarative of existing California law. The City may offset such damages against sums which would otherwise be due to Contractor.

ARTICLE 10. OTHER AGREEMENTS OF THE PARTIES

10.01 Relationship of Parties. The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner or joint venturer with City. No employee or agent of Contractor shall be deemed to be an employee of City, nor an agent of City except to the extent contemplated by Section 3.16. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

10.02 Compliance with Law. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and all permits affecting the services to be provided, including but not limited to the Environmental Laws and the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.

10.03 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

10.04 Jurisdiction. Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in Santa Clara County.

10.05 Assignment. Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting their operations in a safe, effective and

responsible fashion, and (ii) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

A. City Consent Required. Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a breach of this Agreement.

B. Assignment Defined. For the purpose of this Section, "assignment" shall include, but not be limited to, (1) a sale, exchange or other transfer to a third party of substantially all of Contractor's assets dedicated to service under this Agreement; (ii) the issuance of new stock to or the sale, exchange or other transfer of thirty percent (30%) or more of the then outstanding common stock of Contractor to a Person other than the shareholders owning said stock at the date of this Agreement. [Modify in light of Contractor's corporate structure.]

C. Consent Requirements. If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
2. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
3. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Municipal Solid Waste/Recycling

management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not been subject to any administrative or judicial proceedings initiated by any federal, state or local agency having jurisdiction over its Municipal Solid Waste/Recycling operations due to any significant failure to comply with state, federal or local laws and that the assignee has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Municipal Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including all Environmental Laws; (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

10.06 Subcontracting. Contractor shall not engage any subcontractors without the prior written consent of City. Contractor shall notify the City at least _____ (____) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) days, or if Contractor wishes to renew after an interval of less than thirty (30) days.

10.07 Binding on Successors. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

10.08 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns, with the express exception of the Participating Agencies, which are third party beneficiaries of City's rights hereunder.

10.09 Waiver. The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

10.10 Contractor's Investigation; No Warranties by City. Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it, including the nature and amount of the Municipal Solid Waste generated within the City and the Participating Agencies and the recycling and source reduction programs now in effect in the City and other Participating Agencies. The Agreement accurately and fairly represents the intentions of Contractor, and Contractor enters into the Agreement on the basis of that independent investigation and analysis.

Contractor has carefully reviewed the information in the Request for Proposals and Addenda, if any. Contractor has had the opportunity to inspect the Station Site; the Station; the equipment installed in the Station; the environmental review documents (including the FEIR and the addendum thereto adopted in August 1992), as well as the permits governing its operation; the Source Reduction and Recycling Elements adopted by each of the Participating Agencies under the Act; the Disposal Agreement with Waste Management, Inc.; the collection agreements between each of the Participating Agencies and their respective Designated Haulers; and the plans for reconstructing the Municipal Solid Waste line. **[Other Documents]**

While City believes that the information contained in the Request for Proposals is substantially correct, City makes no warranties in connection with this Agreement, including but not limited to the information contained in the Request for Proposals. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Municipal Solid Waste and Source-Separated Recyclable Materials delivered to the Station.

10.11 Condemnation. City reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement through the exercise of the

right of eminent domain, in accordance with the procedure described in Section 1605 of the City Charter.

10.12 Notice. All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall, except as provided in Section 9.02, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to City: City Manager
456 West Olive Avenue
P.O. Box 3707
Sunnyvale, CA 94088-3707

with a copy to the Director of Public Works.

If to Contractor: _____

Attention: _____

Copies shall be sent to the other Participating Agencies, at addresses to be furnished by them from time to time. The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

10.13 Representatives of the Parties.

A. Representatives of City. References in this Agreement to "City" shall mean the Sunnyvale City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, the Director of the Department of Public Works and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

B. Representatives of Contractor. Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the

representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

10.14 Duty of Contractor Not to Discriminate. Contractor shall not discriminate, nor permit any subcontractor to discriminate, in the employment of persons engaged in the performance of this Agreement or in the use of the Station on account of race, color, national origin, ancestry, religion, sex, age, physical handicap, medical condition, sexual orientation or marital status, in violation of any applicable federal or state law.

10.15 City Environmental Policies. Contractor and its subcontractors shall comply with City's Environmental Procurement Policy, the requirements of which are described in Exhibit ___-1 and City's Integrated Pest Management Policy described in Exhibit ___-2.

10.16 Right to Enter and Inspect Station. City shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Agreement. In connection therewith, City shall have the right to enter the Station during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor's operations, City may review and copy any of Contractor's operational and business records related to this Agreement, including but not limited to utility bills and records of employee training. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media.

10.17 Recycling Programs Not Restricted. Nothing in this Agreement shall restrict City or the other Participating Agencies, or any of them, as to their participation or non-participation, or the nature or extent of their participation in, any Recycling program, developed or operated by City, the other Participating Agencies, or

by one (1) or more residents, businesses, commercial, industrial or retail operators, or other persons, within their respective jurisdictions.

Notwithstanding the foregoing, the City agrees to deliver, or arrange for the delivery, to the Station of all Source-Separated Recyclable Materials which are collected from residences within the City and the City of Mountain View by employees of either city, by their respective Designated Haulers, or by other Persons operating a program of collecting Source-Separated Recyclable Materials from residences under a contract with the City or the City of Mountain View. The City does not, however, guarantee that it or the City of Mountain View will continue to operate such a program, nor does it guarantee that privately-sponsored residential recycling programs will not operate within either city or both cities.

10.18 Maintenance and Review of Records, Submission of Reports.

Contractor shall compile, on a daily basis, accurate records of its operations at the Station in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Agreement, including, but not limited to, Articles 3 through 6 hereof. City shall have the right during regular business hours to review and make copies of (at City's expense) any documents relevant to this Agreement, including, but not limited to, Contractor's payroll records, cash register records, scale records, videotape recordings of transactions at the scale house, and records maintained in electronic, magnetic and other media.

Contractor shall prepare and submit complete, accurate and timely reports on forms provided or approved by City, including those reporting forms attached as Exhibit _____ of this Agreement.

10.19 Right to Demand Assurances of Performance. If Contractor (1) "persistently" suffers the imposition of liquidated damages under Section 9.06; (2) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (3) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (4) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law, City may, at its option and in addition to all other remedies

it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require.

10.20 Right of City to Make Changes. City may, without amending this Agreement, direct Contractor to cease performing one (1) or more types of service described in Articles 3 and 4, may direct Contractor to modify the scope of one (1) or more such services, may direct Contractor to perform additional solid waste processing services, or may otherwise direct Contractor to modify its performance under any other Section of this Agreement, including, by way of example, directing Contractor to deliver Municipal Solid Waste to a different disposal facility. Contractor shall promptly and cooperatively comply with such direction.

If such changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in the Contractor's compensation shall be made. Contractor will continue to perform the new or changed service while the appropriate adjustment in the Contractor's compensation is being determined.

If City has directed a change in the scope of work under this Section and either party believes that such change will increase or decrease the costs of providing service, the party which believes the Contractor's compensation should be adjusted shall within thirty (30) calendar days submit to the other party a proposed adjustment and the parties shall thereafter meet and discuss the matter. Contractor shall promptly provide all relevant schedules, supporting documentation and other financial information requested by City to evaluate the necessity for an adjustment and the amount thereof. City's Director of Public Works shall participate in key meetings regarding those adjustments. Within ninety (90) days of the submission of the proposed adjustment, City will determine the amount of the adjustment, if any, and shall thereafter adjust the Contractor's compensation accordingly. Any adjustments will be made effective as of the date the change in service is implemented.

If the Contractor is dissatisfied with the decision of the City, any dispute shall be referred to and resolved by binding arbitration conducted pursuant to the procedures set forth in Exhibit _____.

10.21 Force Majeure. Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, labor unrest of other than the party's employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse. A party claiming excuse under this Section must have taken reasonable precautions, if possible, to avoid being affected by the cause.

A. No Excuse from Performance. Neither Contractor nor the City shall be excused from the performance of its obligations under this Agreement except where a party's failure to perform is due to an event of Force Majeure, as defined in this Agreement.

B. Obligation to Restore Ability to Perform. Any suspension of performance by a party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.

C. Notice. The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances, but in any event not later than five (5) days after the occurrence of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests.

D. City's Rights in the Event of Force Majeure. The partial or complete interruption or discontinuance of Contractor's services caused by an event of Force Majeure shall not constitute an event of default under this Agreement.

Notwithstanding the foregoing: (i) the City shall have the right to make use of Contractor's facilities and equipment in accordance with Section 9.04 of this Agreement in the event of non-performance excused by Force Majeure; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right, in its sole discretion, to immediately terminate this Contract; (iii) if Contractor is unable to collect and dispose of Municipal Solid Waste as required by this Contract for a period of three (3) or more consecutive days or for any (3) days in a seven (7)-day period as a result of Force Majeure, the City shall have the right to make use of Contractor's property in accordance with Section 9.04, and (iv) if Contractor's inability to collect and dispose of Municipal Solid Waste continues for fourteen (14) days or more from the date by which Contractor gave or should have given notice under Subsection C above, the City may terminate this Contract.

10.22 Cooperation During Transition. At the expiration or earlier termination of the Term, Contractor, at its own expense, shall cooperate fully with the City, as necessary, to ensure an orderly transition to any and all new service providers. In addition, during the last twelve months of the Term, Contractor shall allow prospective operators to observe operations at the Station.

10.23 Guaranty. Concurrently with its execution of this contract, Contractor shall furnish a Guaranty of its performance under this Agreement in the form of Exhibit _____, properly executed by each of the parties whose names appear on Exhibit _____.

10.24 Reports as Public Records. The reports, records and other information submitted (or required to be submitted) by Contractor to City are public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by the City upon request.

ARTICLE 11. MISCELLANEOUS AGREEMENTS

11.01 Exhibits. Each of the Exhibits, identified as Exhibits "A" through "____," is attached hereto and incorporated herein and made a part hereof by this reference.

11.02 Entire Agreement. This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

11.03 Section Headings. The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

11.04 Interpretation. This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

11.05 Amendment. This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

11.06 Severability. If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein.

11.07 Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

11.08 References to Laws. All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified. In addition, references to specific governmental

agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF SUNNYVALE ("City")

CITY CLERK

By: _____
Deputy City Clerk

By: _____
City Manager

By: _____
APPROVED AS TO FORM

CONTRACTOR (NAME)

By: _____
Title

By: _____
Title

DEFINITIONS

1. **Agreement.** "Agreement" means this Agreement between City and Contractor for the Operation of the Sunnyvale Materials Recovery and Transfer Station dated as of _____, 200__, including all exhibits and attachments, and any amendments hereto.

2. **Ash.** "Ash" means the material remaining after incineration of Municipal Solid Waste, including bottom ash and fly ash. "Ash" does not include ashes from residential burning, such as fireplaces, barbecues, etc.

3. **Bulky Waste.** "Bulky Waste" means stoves, refrigerators, other white goods, furniture and other similar waste materials with weights or volumes greater than those allowed in waste collection cans.

4. **City.** "City" means the City of Sunnyvale, a municipal corporation, and all of the territory lying within its municipal boundaries as presently existing or as such boundaries may be modified during the Term, as well as unincorporated areas completely surrounded by City which are provided solid waste collection services by City or by a company or companies which from time to time is granted the exclusive right to franchise to collect Municipal Solid Waste for City.

5. **Construction Debris.** "Construction Debris" means waste building materials resulting from construction, remodeling, repair or demolition operations.

6. **Contractor.** "Contractor" means _____,
a _____.

7. **Designated Hauler.** "Designated Hauler" means the company or companies which from time to time are granted the exclusive right or franchise to collect Municipal Solid Waste within the Participating Agencies and deliver it to the Station.

8. **Designated Waste.** "Designated Waste" means those substances classified as designated waste by the State of California, presently in 23 California Code of Regulations Section 2522.

9. **Disposal Contract.** "Disposal Contract" means the Agreement for Long Term Disposal of Solid Waste between the City and Waste Management of California, Inc., dated as of September 10, 1991. For purposes of Section 3.08 of this Agreement, the term Disposal Contract also includes the Mountain View-Waste Management Disposal Contract dated as of September 24, 1991, and the Palo Alto-Waste Management Disposal Contract dated as of October 7, 1991.

10. **Disposal Facility.** "Disposal Facility" means the Kirby Canyon Recycling and Disposal Facility located east of U.S. Highway 101 in San Jose, California.

11. **Disposal Fee.** "Disposal Fee" means the amount payable by the Participating Agencies to Waste Management of California, Inc. (or whatever company

owns and/or operates the Disposal Facility) for Municipal Solid Waste delivered to the Disposal Facility pursuant to the Disposal Contract and the Neighboring Cities' Disposal Contracts, including taxes and governmental fees.

12. Effective Date. "Effective Date" has the meaning set forth in Section 2.01 of the Agreement.

13. Environmental Laws. "Environmental Laws" means all federal and state statutes, county and city ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Federal Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Federal Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the California Integrated Waste Management Act, California Public Resources Code Section 40000 *et seq.*; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100 *et seq.*; the California Toxic Substances Account Act, California Health and Safety Code Section 25300 *et seq.*; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 *et seq.*; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5 *et seq.*; the California Clean Air Act, Health and Safety Code Sections 39000 *et seq.*; the California Hazardous Materials Response Plan and Inventory Act, Health and Safety Code Sections 25500 *et seq.*, as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

14. Extended Service Area. "Extended Service Area" means any area in Santa Clara County, outside the Primary Service Area, from which the City authorizes the Contractor to accept Municipal Solid Waste and/or Recyclable Materials at the Station.

15. FEIR. "FEIR" means the Final Environmental Impact Report entitled "Sunnyvale Materials Recovery and Transfer Station Environmental Impact Report" certified by the Sunnyvale City Council on September 25, 1990, including the Draft Environmental Impact Report dated June 18, 1990 and the Final Environmental Impact Report dated September 14, 1990.

16. Garbage. "Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any product thereof, resulting from the preparation, storage, handling or consumption of such substances.

17. Gate Fee. "Gate Fee" means the amount (initially \$5.50 per cubic yard) which Contractor is entitled to collect from users of the Station delivering Publicly Hauled Waste, and to retain. It is a component of the Public Use Fee.

18. Hazardous Waste. "Hazardous Waste" means:

- i. all substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act (42 U.S.C. Section 3251 *et seq.*), as amended, including the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*) and all future amendments thereto or regulations promulgated thereunder;
- ii. all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Health and Safety Code Sections 25110.02, 25115, and 25117, and future amendments to or recodifications of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and
- iii. radioactive wastes.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste," for purposes of processing and disposal to land, the broader, more restrictive definition shall be employed for purposes of this Agreement.

19. Host Fee. "Host Fee means the amount which City is entitled to receive for Municipal Solid Waste delivered to the Station from the other Participating Agencies, for Publicly Hauled Waste, and for any materials from outside the Primary Service Area. Contractor is to collect the Host Fee, as a component of the Public Use Fee or Outside User Fee, and remit it to City.

20. Maintenance Waste. "Maintenance Waste" means the following materials collected by maintenance employees of a Participating Agency or by private contractors hired by a Participating Agency:

- i. debris from street and sewer repairs;
- ii. debris from street sweepings;
- iii. grass clippings, leaves and tree trimmings from maintenance of parks, streets, median strips and other city property;
- iv. rock and concrete;
- v. concrete and asphalt pavement from streets; and
- vi. tree stumps.

21. Medical Waste. "Medical Waste" means those materials defined in Health and Safety Code Section 25023.2 and does not include waste identified as not being medical wastes in Section 25023.8.

22. Memorandum of Understanding. "Memorandum of Understanding" means the Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a

Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon made as of June 9, 1992.

23. Minimum Recycling Level. The percentage shown in Section 3.05.B which Contractor is obligated to Recycle.

24. Municipal Solid Waste. "Municipal Solid Waste" means all substances or materials that are discarded or rejected as being spent, useless, worthless or in excess of the owner's needs at the time of discard or rejection including, without limitation, all putrescible and non-putrescible solid and semi-solid waste including Garbage, Rubbish, Maintenance Waste, Yard Waste, Bulky Wastes, industrial wastes, Construction Debris, and grit and sweepings from a Water Pollution Control Plant, which are generated by residential, commercial, industrial, institutional, municipal, agricultural and other activities and which are not otherwise restricted in a Class III landfill by State or Federal regulations and which are delivered to the Station.

Municipal Solid Waste does not include: (i) Hazardous Waste; (ii) Designated Waste; (iii) Medical Waste; (iv) Ash; (v) Source-Separated Yard Trimmings; (vi) Source-Separated Recyclable Materials; or (vii) materials segregated for processing and recycling at the Transfer Station once they have been so segregated and processed.

25. Neighboring Cities. "Neighboring Cities" means the cities of Mountain View and Palo Alto.

26. Neighboring Cities' Disposal Contracts. "Neighboring Cities Disposal Contracts" means the Agreements for Long Term Disposal of Solid Waste between Mountain View and Waste Management of California, Inc., dated as of September 24, 1991, and the Agreement for Long Term Disposal of Solid Waste between Palo Alto and Waste Management of California, Inc., dated as of October 7, 1991.

27. Outside User Fees. "Outside User Fees" means the amounts established by City which Contractor is to collect from users of the Station from outside the Primary Service Area, and to remit to City.

28. Participating Agencies. "Participating Agencies" means the three cities of Palo Alto, Mountain View and Sunnyvale, or any of them, as the context requires.

29. Person. "Person" includes any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Santa Clara, municipality or special purpose district or any other entity whatsoever.

30. Primary Service Area. "Primary Service Area" means the geographical area within the jurisdiction of the Participating Agencies and any contiguous areas which are served by the Designated Hauler(s) of one or more Participating Agencies.

31. Processing. "Processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

32. Proposal. "Proposal" means the Proposal dated _____, submitted by Contractor to City under cover of a letter dated _____, including all attachments and exhibits (i.e., Proposal Forms ____ through ____).

33. Public Use Fee. "Public Use Fee" means amounts established by City to be charged to persons delivering Publicly Hauled Waste to the Station.

34. Publicly Hauled Waste. "Publicly Hauled Waste" and "Publicly Hauled Municipal Solid Waste" mean Municipal Solid Waste delivered to the Station by persons other than the Participating Agencies and/or their Designated Haulers.

35. Recyclable Materials. "Recyclable Materials" means any materials pulled out of the waste stream, including domestic, commercial or industrial by-products of some potential value which are set aside, handled, packaged or offered for collection in a manner different from Garbage, Rubbish or other forms of Municipal Solid Waste.

36. Recycle; Recycling. "Recycle" or "Recycling" means the process of collecting, sorting, cleaning, treating and reconstituting materials and returning them to the economic mainstream in the form of raw material for new, reused or reconstructed products which meet the quality standards necessary to be used in the marketplace. "Recycle" or "Recycling" does not include Transformation, except for the Transformation of wood (but not wood by-products, such as paper) to produce fuel.

37. Recycling Level. "Recycling Level" means the percentage of the Municipal Solid Waste (including Publicly Hauled Waste) entering the Station which is diverted from land disposal by Contractor's operations and thereafter recycled. The Recycling Level will be calculated as shown on Exhibit S.

38. Rubbish. "Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes from residential burning, floor sweepings, glass, and other waste materials not included in the definition of Garbage, Hazardous Waste, or Yard Waste.

39. Sharps. "Sharps" means sharp-edged or pointed medical implements, such as needles, lancets, etc.

40. Source-Separated Recyclable Materials. "Source-Separated Recyclable Materials" means Recyclable Materials which have been segregated into separate containers by the Waste Generator, the Designated Hauler or other Persons prior to their delivery to the Station. Materials delivered to the Buyback/Dropoff Center and materials collected by the Participating Agencies' Designated Haulers as part of "curbside" recycling programs are included in Source-Separated Recyclable Materials.

41. Station. "Station" means the facility owned by the City which is utilized to receive Municipal Solid Waste, to temporarily store, separate, recover, convert or otherwise process the materials comprising the Municipal Solid Waste, to Recycle materials from the Municipal Solid Waste and to transfer the remaining Municipal Solid Waste to Transfer Vehicles for transport to the Disposal Facility.

42. **Station Site.** "Station Site" means the area (approximately 9 acres) on which the Station and appurtenances are located.

43. **Term.** "Term" has the meaning set forth in Section 2.02 of the Agreement.

44. **Ton.** "Ton" means a short ton of 2,000 pounds avoirdupois.

45. **Transfer Vehicle.** A tractor and trailer designed to haul a load of no less than 20 Tons of solid waste.

46. **Transferee Municipality.** "Transferee Municipality" means any municipal corporation to which City, or any of the other Participating Agencies, has transferred a portion of its Allocation Quantity in accordance with Section 3.04 of the Disposal Contract or Neighboring Cities' Disposal Contracts.

47. **Transformation.** "Transformation" means the incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

48. **Yard Trimmings.** "Yard Trimmings" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, and similar organic materials. Yard Trimmings may be Source-Separated Recyclable Materials if they are segregated prior to collection and delivered to the Station in a separated condition. They may also constitute Municipal Solid Waste if they are delivered commingled with other waste materials.

OPERATING STANDARDS AND PROCEDURES

1. **Signs.** The City will post easily-readable signs at the entrance to the Transfer Station detailing the regulations which must be followed by vehicles entering the station, indicating the hours of operation, the types of waste and Recyclable Materials accepted, the rates charged, and a local telephone number to call for information or in case of emergency. Contractor shall maintain and repair these and other on-site signs. Contractor shall not post any signs without the prior written consent of the City.

2. **Traffic Control.** Contractor shall be responsible for the safe control and direction of traffic once it enters the Transfer Station Site. Contractor shall make optimal use of queuing lanes and unloading spaces and shall operate and store vehicles so as not to impede on-site traffic.

3. **Floor Operation and Transfer Loading.** The depth and breadth of Municipal Solid Waste on the Transfer Station floor shall not reach a point where unloading by users is hampered. Solid waste shall be loaded into transfer trailers so the gross weight of the transfer tractor and trailer does not exceed weight limitations for streets or highways established by the public agency or agencies having jurisdiction therefor. At least once during each 24 hour period, the Transfer Station floor will be completely cleared of all solid waste, provided that Contractor may accomplish this in two phases, with one half the floor cleared at one time.

4. **Control of Blowing Debris.** Contractor shall sweep daily (1) all areas within the Transfer Station Site, and (2) Carl Road east of Borregas Avenue. In addition, Contractor shall police at least twice weekly the street frontages abutting the Site (i.e., Borregas Avenue from Carl Road to Moffett Park Drive; Matilda Avenue from Highway 237 to Caribbean Drive and Caribbean Drive from the north end of Matilda Avenue to Highway 237), collecting all debris along these streets. Materials so collected shall be disposed of at the Transfer Station.

5. **Vector Control.** Contractor shall conduct the operation of the Transfer Station in such a manner as to ensure that conditions are unfavorable for production of rodents and insects. In the event that rodent and insect activity becomes apparent to the Local Enforcement Agency or the City, supplemental vector control measures shall be initiated by Contractor, as directed by the Local Enforcement Agency and the City.

6. **Odor, Dust and Noise Control.** Contractor shall control odor and dust at the Transfer Station by use of installed dust control systems and odor control programs, as described in the FEIR. Contractor shall operate its equipment within limits of applicable noise regulations.

7. **Fire Control.** Contractor shall provide all necessary and appropriate fire control equipment. Prior to commencing operations at the Transfer Station, Contractor shall submit a fire control/handling plan for the Transfer Station and obtain approval from the City.

8. **Weighing.** Contractor shall weigh all Municipal Solid Waste delivered by the City, the other Participating Agencies, their respective Designated Haulers and by any other municipalities or their Designated Haulers. Contractor shall calculate the weight of Publicly Hauled Waste by determining the volume of all vehicles delivering such waste and applying the conversion factors in Exhibit M. (If actual weighing of such vehicles becomes legally required under state or federal law, City shall make the necessary changes to the scales, including the addition of new scales and scale lanes, to accommodate the weighing efficiently. [The weighing of vehicles delivering Publicly Hauled Waste will be considered a change in scope under Section 10.20.]) Contractor shall weigh each loaded transfer vehicle as it leaves the Transfer Station for the Disposal Site. Contractor shall also weigh all source-separated Recyclable Materials delivered to the Station.

All such scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in Title 4 California Code of Regulations Division 9. Contractor shall request that the California Department of Food and Agriculture, Division of Measurement Standards, inspect all scales and weighing equipment at least once per year. In addition, Contractor shall check the accuracy of scales using appropriate methods (for example by weighing the same load on two scales) when requested by the City, but not more than once per week.

If a scale or weighing equipment is found to be measuring inaccurately and the errors are outside the tolerances allowed in Title 4 California Code of Regulations, Division 9, Contractor will promptly repair or recalibrate it so that it does operate accurately.

Vehicles delivering Recyclable Materials collected through curbside and other programs shall be weighed so that the weight of each separated compartment of materials (e.g., aluminum, glass, plastic, newspaper, etc.) is separately measured and recorded. This will be accomplished by multiple weighings, after the vehicle has unloaded each separate compartment of material. If a predetermined tare weight for each vehicle is used in this process, the last material unloaded will be newspaper or whatever is the lowest unit-value material. At City's request, Contractor shall sort representative samples of materials to determine their actual material-by-material composition.

9. **Establishment of Vehicles' Tare Weights.** On or before August 1, 2000, Contractor shall provide the City with a copy of its standard methodology for determining tare weights for City's review and approval. Contractor shall modify its standard methodology if requested to do so by City. Between October 1 and December 1, 2000, Contractor shall weigh each vehicle of the City, the Participating Agencies and their Designated Haulers which will or may be used to deliver Municipal Solid Waste or Recyclable Materials to the Transfer Station, to determine their unloaded ("tare") weights. Vehicles to be weighed include, but are not limited to, front, side and rear loaders, roll-off trucks, street sweepers, recycling trucks, pickup trucks, vans and trucks and trailers. In addition, during the same period of time, Contractor shall weigh each transfer trailer which will or may be used to deliver Municipal Solid Waste to the Disposal Site.

The tare weight of each vehicle shall be recorded by Owner (i.e., City, hauler or Contractor) and vehicle number and the tare weights of all vehicles will be furnished to the City within thirty (30) days after each vehicle is weighed. Contractor shall be responsible for coordinating the weighing of vehicles with City and the other Participating Agencies and their Designated Haulers.

When additional or replacement vehicles are placed into service by the City, the other Participating Agencies or their Designated Haulers, or the Contractor and when the City or other Participating Agencies change their Designated Haulers, Contractor shall promptly weigh such additional and replacement vehicles and the vehicles of the new Designated Hauler and provide the tare weights to the City within thirty (30) days after the vehicles are weighed.

All weighing shall be conducted at the Transfer Station by a certified weighmaster. Weighing shall be conducted in accordance with Contractor's standard methodology, in the form approved by the City.

Contractor shall have the right to conduct random re-weighing of all vehicles, provided that re-weighing of any vehicles shall occur no more than twice a year. If requested in writing by City, all vehicles delivering Municipal Solid Waste or Recyclable Materials to the Transfer Station or delivering Municipal Solid Waste to the Disposal Site shall be reweighed by Contractor, following the City approved methodology, at six (6) month intervals. In addition, any specific vehicle shall be reweighed by Contractor at City's request, within one (1) week after City delivers a written request to do so. Adjusted tare weights shall be furnished to the City within thirty (30) days after re-weighing.

10. Cubic Yard - Ton Conversions. If the scales and weighing equipment are temporarily out of service, Contractor shall:

1) for collection vehicles owned by Designated Haulers, use the average Tons recorded for each vehicle for its three deliveries immediately preceding the outage;

2) for debris boxes, use the rated capacity of the box in cubic yards multiplied by the yards to tons factor for miscellaneous Publicly Hauled Waste on Exhibit M; and

3) for Publicly Hauled Waste, Contractor shall measure and record the amount of such waste in cubic yards.- Cubic yards shall be converted to Tons for purposes of payments due under Articles 6 and 7 by utilizing the conversion factors set forth in Exhibit M.

Contractor shall arrange for scales to be repaired or temporary substitute scales to be used as soon as possible and, in any event, within forty-eight (48) hours after the failure of the permanent scales.

11. Personnel. There will be at least one employee of Contractor physically in attendance at the Transfer Station at all times, whether or not the Transfer Station is operating, or open.

During the hours of 6 a.m. to 7 p.m., seven (7) days a week, there will be a Station Manager or lead worker who is the representative of Contractor on-site. City will be informed of his/her name. At all other times, there will be a supervisory employee designated as emergency coordinator who will be on-call. Employees who are on-site (and the City) will be instructed how to contact this emergency coordinator.

When the Transfer Station is operating outside of the regular operating hours, there will be a night supervisor on-site. If there is more than one employee on-site, one will be in charge and employees (and the City) will be informed as to the chain of command.

12. Training of Personnel. Contractor shall provide adequate operational and safety training for all of its employees who are involved in performing operations at the Transfer Station. All such personnel shall be trained in the identification and proper handling and disposal of Hazardous and Biomedical Wastes. The training will comply with the health and safety plan. Contractor will comply with the health and safety plan, unless changes thereto are approved by the City.

13. Equipment.

A. General. All equipment shall comply with all applicable federal, state, and local laws, including (1) U.S. Department of Transportation: Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Interstate Motor Carrier Noise Emissions Standards, (2) U.S. Environmental Protection Agency: Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, and (3) Bay Area Air Quality Management District.

B. Tractors and Trailers. All tractors and transfer trailers (individually and in combination) shall comply with the laws described in subsection A. Tractors and transfer trailers shall be painted in a uniform color scheme approved by the City of Sunnyvale and shall prominently display a SMaRT Station service mark (logo), the design and placement of which are subject to City approval.

C. Between October 1 and December 1, 2000, Contractor shall submit to City a list of the equipment it proposes to use at the Transfer Station and in delivering Municipal Solid Waste to the Disposal Facility.

D. Contractor shall furnish backup, substitute or replacement equipment necessary to continue uninterrupted operations, transfer and disposal when equipment regularly in service is inoperable or unavailable.

E. All loaded transfer trailers must be parked on the tipping floor at the end of the day.

F. Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the Station and shall use due care in their operation to avoid damaging the tipping floor.

14. Cleaning and Maintenance.

A. General. Contractor shall maintain all properties, facilities and equipment used in providing service under this Agreement in a safe, clean, neat, and operable condition at all times.

B. Cleaning. Tractors and transfer trailers shall be kept clean, shall be thoroughly washed on the exterior at least once every week and thoroughly cleaned with pressurized hot water at least once per year.

Building office areas shall be cleaned daily. Work areas within buildings and structures shall be swept daily and washed twice a week. The refuse transfer truck loading area shall be cleaned and swept at the end of each operating day.

Municipal Solid Waste may not be left on the tipping floor for more than 24 hours.

Municipal Solid Waste (other than Recyclable Materials) shall be removed to the Disposal Facility within 48 hours after its delivery to the Transfer Station. Municipal Solid Waste shall not be burned or buried at the Transfer Station Site. Wastes shall not be disposed of into storm drains, or into sanitary sewers without proper pretreatment meeting the requirements of the Sunnyvale Industrial Waste Program.

The transfer building(s) shall be thoroughly cleaned with pressurized hot water at least once per year and one month prior to expiration of the Term of this Agreement.

C. Painting. Vehicles shall be repainted and/or refurbished so that they present an acceptable appearance in the opinion of the City's Public Works Director.

All surfaces on the interior of all buildings and structures shall be repainted or refurbished by Contractor so that they present an acceptable appearance in the opinion of the City's Public Works Director, provided that painting will not be required more often than once every four years. The type of paint, color and method of application shall be submitted to the City for review and approval prior to commencement of repainting work.

D. Maintenance and Repair; Alterations.

1. City's Obligations. Subject to Section 20, City shall maintain in good condition the roofs, structural portions and exterior walls (but not plate glass, glass windows, window frames, doors and door frames, which are the responsibility of Contractor), and paved exterior areas, unless such maintenance and repair becomes necessary in whole or in part due to acts of Contractor, in which case Contractor shall pay City the reasonable cost of such maintenance. City shall repair or replace, if and when necessary, the tipping floor.

2. Contractor's Obligations. Subject to Section 20, Contractor shall keep and maintain in good, safe condition and repair the Station, appurtenances and every part thereof, including without limitation the stationary equipment, such as conveyors, compactors, trommels, balers, shredders and screens; plumbing and sewage facilities; mechanical, electrical, lighting, heating, ventilating and air conditioning systems; fire and dust suppression systems; fuel storage and dispensing facilities; scales, and all personal property furnished by Contractor including vehicles.

Contractor shall perform periodic maintenance on all equipment, in accordance with applicable manufacturer's specifications and schedules and so as to maintain in force any manufacturer's/vendor's warranties. City will assist Contractor in securing manufacturer's/vendor's repair and replacement of equipment due under warranties (if any) provided to City in connection with the purchase of such equipment which Contractor is required to maintain and repair.

Contractor shall also repair any damage to any facilities, whether owned by it or City, caused by the actions of its employees, subcontractors or other agents.

Contractor shall be responsible for securing replacement parts (and for maintaining an inventory of spare parts as agreed on with City) for all equipment and for Station systems and facilities which it is required to maintain and repair. City will reimburse Contractor for the out-of-pocket cost of replacement/spare parts used for stationary equipment owned by City. The cost of all other replacement/spare parts, including those for equipment furnished by Contractor and for Station systems and facilities, will be borne by Contractor and is therefore included in the compensation provided under Article 5. The cost of all labor required for maintenance and repair performed by Contractor will be borne by Contractor and is included in the compensation provided under Article 5.

Contractor shall not make any alterations to the Station or to facilities or equipment owned by City without City's prior written consent. In order to obtain such consent, Contractor shall submit plans and specifications, or other form of description as required by City, to City prior to commencing any alteration. If Contractor performs any alteration work prior to receiving City approval, City may require Contractor to remove all such work at Contractor's sole expense and restore the Station, facility or equipment to its prior condition.

E. Wastewater Disposal. The wastewater collected in the Station's sumps (from Municipal Solid Waste, wash-down operations, etc.) does not meet the standards for discharge to the Sunnyvale Water Pollution Control Plant, Contractor shall be responsible for periodic pumping of collected wastewater by a pumping truck, its transport offsite and proper disposal in accordance with applicable regulations. The Contractor shall be responsible for the cost of pumping, transport and disposal.

15. Landscape Maintenance. Contractor shall regularly maintain (e.g. water, weed, prune and repair) all landscaped areas within the Station Site (i.e., within the perimeter fence and out to the gatehouse) so that they present a neat and attractive appearance to the satisfaction of the City's Director of Public Works. Contractor shall replace all plant materials (trees, bushes, etc.) which are damaged or killed by Contractor's operations with plant materials of the same type, unless a

different type is approved in advance by the Director of Public Works or the City's Landscape Maintenance Supervisor.

16. Complaints about Operation of Transfer Station. All complaints about the operation or maintenance of the Transfer Station shall be directed to the person designated as Station Manager by Contractor. Such complaints shall not be directed by Contractor to City. The Station Manager shall compile a log of all complaints brought to his or her attention or that of his or her staff, indicating the date and time the complaint was received; the name, address and telephone number of the party making the complaint; and the action taken to correct or modify the situation complained of. Each month Contractor shall send to City a copy of the log of complaints for the previous month.

17. Tours of Transfer Station. Upon reasonable request of City, Contractor shall provide tours of the Transfer Station. Such tours shall not unreasonably disrupt Transfer Station operations. Contractor shall not be required to conduct such tours more frequently than once per week. City shall not be charged for labor, overhead, overtime, or any other costs associated with any such tours. Contractor shall distribute the brochures described in Section 18 to participants on the tours.

18. Brochures. Contractor shall prepare an educational brochure, printed on recycled paper, describing the Transfer Station operations and addressing conservation, recycling and general solid waste management programs. The City shall be provided the brochure in draft and shall have absolute authority over its text and format. Upon approval by City, Contractor shall arrange for the brochure to be printed and will provide City with 10,000 copies. Alternatively, at City's option, Contractor will provide City with \$25,000 and City will take responsibility for design and production of the brochure.

19. Customer Courtesy. Contractor shall insure that its employees deal with members of the public in a courteous and professional manner.

20. Destruction of Premises. If the Station is totally or partially destroyed from a risk covered by insurance in effect at the time, City shall restore the Station to substantially the same condition as it was in immediately before destruction, provided that City's obligation hereunder is limited to the amount of insurance proceeds it receives. Such destruction shall not terminate this Agreement.

If the Station is totally or partially destroyed by a risk not covered by insurance then in effect, City shall have the election to terminate this Agreement or to restore the premises, such election to be made within a reasonable time after the destruction occurs.

21. Use of Premises. Contractor shall use the Station and Station Site only for processing of Municipal Solid Waste delivered under this Agreement and for directly related support purposes.

22. Spill Response Plan. Contractor shall provide kits for cleanup of spills of hazardous materials, including used motor oil, on the Station Site. Contractor shall

implement the Spill Response component of the Hazardous Waste Exclusion Program set out as Exhibit G to this Agreement.

23. Site Security Cameras. Contractor shall be responsible for maintaining the nine (9) existing site security cameras and for installing any additional cameras necessary to assure adequate site security.

APPENDIX D

MEMORANDUM OF UNDERSTANDING

DAK have 1992 hardcopy

APPENDIX E

WASTE COMPOSITION DATA

1. 2005 Outbound Residue Composition Data [DAK: City to provide data]
2. 1995 Inbound MSW Composition Data [DAK: have hardcopy]

APPENDIX F

WASTEWATER MANAGEMENT DATA

[DAK: City to provide data]

APPENDIX G

DESCRIPTION OF SMaRT STATION EQUIPMENT

[DAK: City to provide updated description of equipment when 90% design complete]

APPENDIX H

PERMITS NECESSARY FOR OPERATION OF THE SMaRT STATION

DAK We have electronic copies of the Conditional use permit (CSV SMaRT CUP.pdf) and the Solid Waste Facility Permit (SMaRT SWFP.pdf)

A. Federal Agencies - *None*

A. State and Regional Agencies

1. California Integrated Waste Management Board / Santa Clara County Health Department as LEA, *Solid Waste Facilities Permit*

1. California Air Resources Board (via Bay Area Air Quality Management District, *Authority to Operate*)

A. Local Permits

1. Conditional Use Permit
1. Sanitary Sewer Connection Permit
1. Industrial Wastewater Discharge Permit
1. Hazardous Materials Storage Permit
1. Underground Tank Permit
1. OSHA Air Compressor Permit

APPENDIX I

TRANSFER/PROCESSING REPORT

[DAK City to provide updated report]

APPENDIX J

EXAMPLE OF MATERIALS RECOVERY AND MARKETING PLAN

DAK: City to provide recent example

APPENDIX K

EXAMPLES OF MONTHLY CONTRACTOR REPORTS

Inbound Franchised Loads by Hauler [\[DAK Rpt. form haulers.xls\]](#)

Inbound Public Loads [\[DAK Rpt. form Pub haul.xls\]](#)

Outbound Commodities [\[DAK Rpt. form OB.xls\]](#)

Commodity Revenue [\[DAK Rpt. form revenues.pdf\]](#)